

# MARKET RESEARCH/ANALYSIS GUIDE

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This guide is being distributed on CD. The CD includes:

- Market Research Guide (Microsoft Word Format and Help File Format)
- Interactive Market Research Examples

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## **Introduction**

Market Research is a common business practice used by government buyers and commercial firms every day. Industry uses it to find sellers, and when making “make or buy” decisions.

With the passage of the Federal Acquisition Streamlining Act (FASA) in 1994, and Federal Acquisition Reform Act (FARA) in 1996, Congress dramatically shifted procurement policy for the federal government. The simplified acquisition threshold has been raised to \$100,000, and simplified acquisition procedures can be used for commercial item buys up to \$5 million. Central to the reforms are the mandates to maximize the acquisition of commercial items and services, and to acquire those items in a manner similar to that used by the commercial business sector. These changes should reduce paperwork, increase competition, streamline the procurement of goods and services, and open the federal marketplace to commercial companies previously reluctant to deal with government entities.

Two of the biggest changes brought by FASA and FARA are the significant discretion allowed to the contracting officer in acquiring commercial items and services, and the increased attention to market research as an integral part of the procurement process. To buy commercial items and services, requirements are not described in detailed specifications, but in terms of the desired results. Government buyers no longer focus on creating goods or services, but finding commercial solutions. Since Market Research is accomplished to support the acquisition of commercial items and services we will briefly cover the policy and definition of them.

## **Commercial Items**

The definition of commercial items has expanded, eliminating many clauses, certifications, and provisions at the prime and subcontract level.

Contractors offering commercial items have a blanket exemption from the Truth in Negotiation Act (TINA) and the requirements of all Cost Accounting Standards (CAS). The government used to buy goods and services tailor made to each requirement. In these cases the government would bear significant cost and schedule risk to develop unique items. This would also require extensive oversight to ensure quality and timeliness of contract performance and increased competition. Market Research shows what technologies, services, and products exist in the commercial market. By using these off-the-shelf goods, we can avoid risk and time associated with government unique items.

### ***Commercial Item Policy***

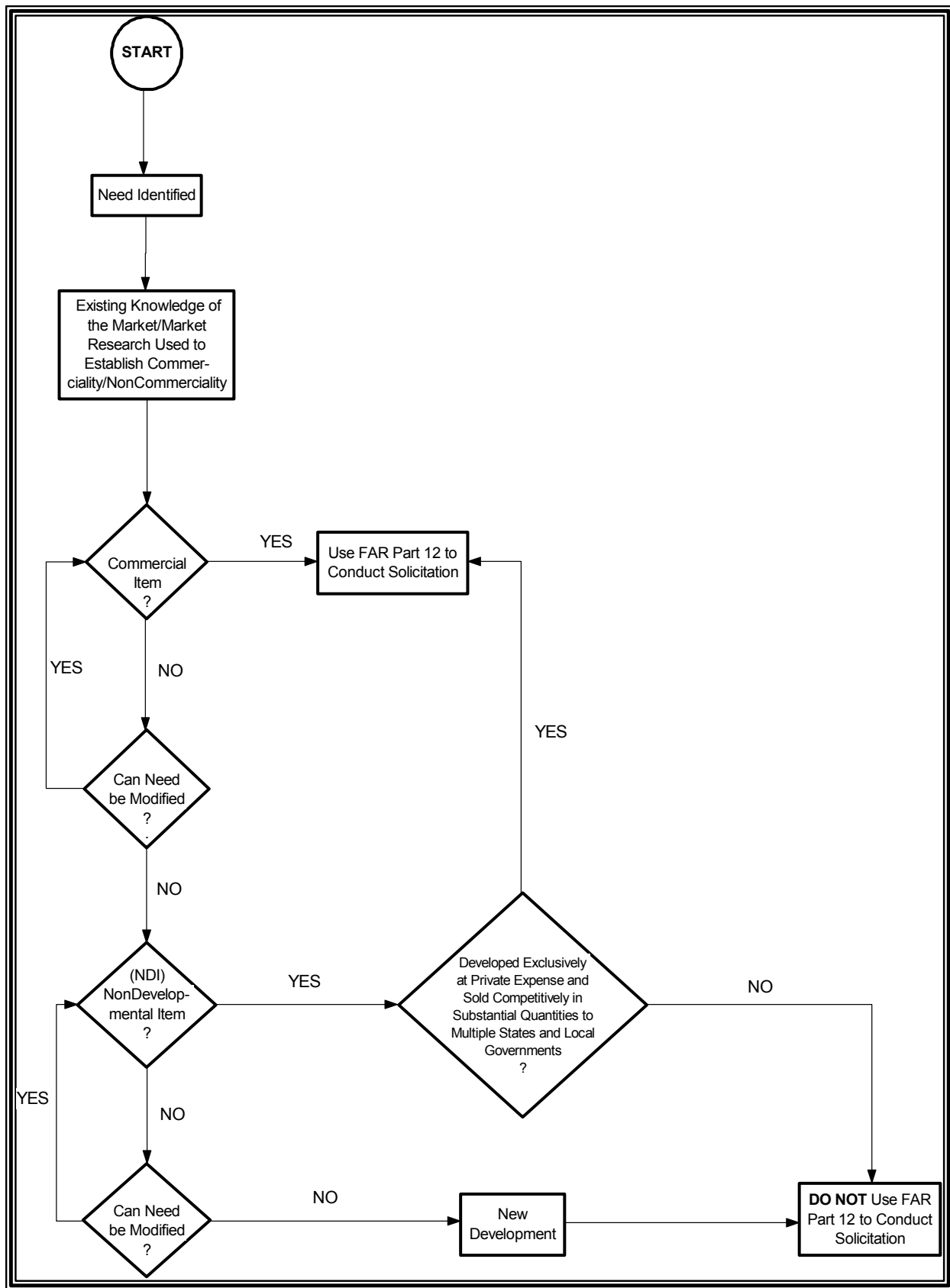
Acquisition reform legislation displays a strong preference for commercial items. The new FAR rules for commercial items are a far cry from the generally prescriptive language we're used to seeing there. Instead, they are intentionally written as guiding principles, to allow for significant exercise of business judgment by the government contracting officer (CO) throughout the conduct of a commercial item acquisition. The law now emphasizes streamlined solicitations and contracts, fewer clauses, and unique government requirements, no cost or pricing data, and significantly less oversight. The policies and procedures rely heavily on the education, training, and professional expertise of contracting officers. Under the new rules, the CO has extremely broad authority to conduct a procurement action for commercial items and services in a manner he or she determines to be consistent with customary commercial practice (as evidenced by FAR 12, which specifically limits agency authority to mandate the use of additional provisions and clauses). Indeed, the regulations now require significant exercise of business judgment. In addition to that increased discretionary authority comes the responsibility to fully document its exercise. Complete documentation of market research findings, determinations of customary

commercial practices, offer/item evaluations, and pricing decisions is now standard practice.

### ***What are Commercial Items?***

The definition of commercial items can be found in FAR part 12. One of the functions of market research is to identify whether or not a given item meets the definition of a commercial item. The Federal Acquisition Streamlining Act included greatly expanded definitions of commercial items and now includes services. However, the statute also makes a clear distinction between commercial items and nondevelopmental items. Nondevelopmental items include any commercial items sold only to governments, that require only minor modification to meet agency needs, and any items in production but not yet in use.

With these new rules, individuals and teams will now have increased capability to meet a user's need in the commercial marketplace using customary market practices versus government imposed practices whenever possible. Empowering people to make choices and tailoring the acquisition are intended to reduce cycle time and cut costs.





Market research is essential because it is required for the Contracting Officer to make the fundamental determinations and decisions of commercial contracting:

- Is it an item of a type customarily used by the general public?
- Will the improved version of a commercial item be available in the commercial marketplace in time to satisfy the delivery requirements?
- Are proposed modifications of a type customarily available in the commercial marketplace?
- Has an item achieved market acceptance?

The CO is responsible for making the determination as to whether these definitions apply. Also, industry must evaluate whether or not their current or future products meet the criteria for commerciality or could be modified accordingly. Therefore, market research is equally important to buyer and seller in government acquisition.

### ***Pricing Commercial Items***

With the changes in FAR there is a new order of precedence for obtaining pricing information for commercial items. So what pricing information do we request?

**NONE**, if the acquisition is based on adequate price competition. Under the new rules this can be only one offeror ***IF*** the contracting officer determines that the offeror(s) reasonably expected they were submitting their bids in a competitive environment.

Information other than cost or pricing data which **may** be obtained from contractors includes;

- Prices available within the government.

- Price information obtained from sources other than the offeror.
- If necessary, price information obtained from the offeror.
- If necessary, cost or pricing data may be obtained after a written determination *as a last resort!*

The Air Force continues to pursue commercial items/practices wherever it makes good business sense to do so. Key to this process of pursuing and purchasing commercial goods and services is the increased emphasis on market research in the process. As stated above, market research/analysis has been a tool in the contracting inventory for a long time. The acquisition reform revolution, as well as the increased emphasis on outsourcing, brings market research to the forefront of acquisition streamlining initiatives. It may take some time for persons involved in the acquisition process to adapt to and become comfortable with recent reform changes. This guide is intended to provide a consolidated reference tool for acquisition professionals wrestling with the conduct of market research.

## **Market Research**

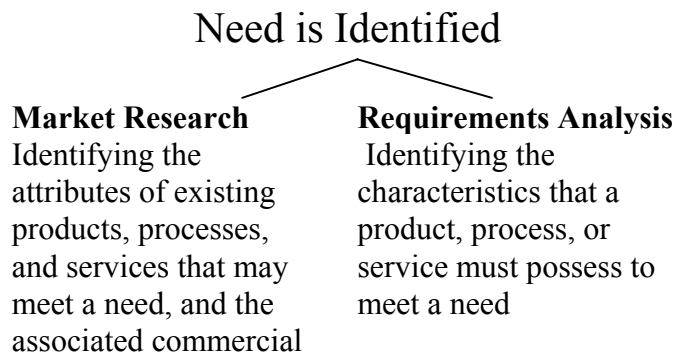
**Market research is the foundation for building an effective solicitation and a successful contract.** This is particularly true for commercial items and services because government contracts personnel are limited by law, to include terms and conditions consistent with customary commercial practice (Customary commercial practices are identified through market research).

FASA prescribed market research is a critical component in describing agency needs, developing an overall acquisition strategy, and identifying the terms, conditions, and practices appropriate for the items being acquired. As a result, new skills, approaches, and perhaps attitudes must be acquired by all personnel to adequately analyze commercial capabilities. Market Research and commercial items acquisition can be broken into four distinct tasks.

<b>Task 1 Describing Agency Needs</b> <b>Task 2 Conducting Market Research</b> <b>Task 3 Making a Commerciality Determination</b> <b>Task 4 Developing the Acquisition Strategy</b>
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***Where do we Start? (TASK 1-Describing Agency Needs)***

The use of market research and the process of defining commercial items comes into play at the beginning of every acquisition. In fact the FAR states "Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research [10.002(a)]



Once the user establishes a need, two actions occur. One is market research to identify the capability of the marketplace to meet the need. The second is requirements analysis, the process used to identify what key characteristics a yet-to-be-identified item or service must possess to meet the user's need. From requirements analysis, these key characteristics are captured in various forms of documentation used to describe an agency's need. Note that market research is identifying the attributes of existing or evolving products or services. Requirements analysis is identifying the key characteristics a yet-to-be-identified product or service must have to meet the user's need. Describing agency needs is the capturing of the requirements analysis information in an appropriate type of requirements documentation. It is an iterative process where market research is used to

influence the requirements documentation at each step along the path.

Through market research, we have identified the product attributes, contractor production and distribution capabilities available in the marketplace to meet the user's needs, as well as commercial business practices. We then use requirements analysis to establish the key characteristics a yet to be identified item or service must have to meet the user's need.

### **How to State Requirements**

FAR Part 11 stipulates that agency needs will be stated in performance terms to the maximum extent practicable so as to encourage offerors to supply commercial items. In order to encourage commercial items, the user must express needs in terms of key characteristics that are related to functional performance.

Define requirements in terms that  
encourage commercial items (first choice); or  
nondevelopmental items (second choice)

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Then, as the needs become better defined through the process of requirements analysis, market research should be a guide to insure that the requirements documentation drives the procurement planning to the best decision for the government, commercial item first, nondevelopmental item second, and new development third.

Refrain from telling the contractor how to meet the requirement. Identify what the item is to do, how well it is to do it, and what it has to interface with --- nothing more. Look for the minimum requirements to meet our need. Use market research to help state the minimum requirements.

Unjustified, uncommon or fringe needs/requirements tend to drive an acquisition from commercial to new development solutions and should be challenged. There must be consistency

between the mission to be performed and the key characteristics (requirements) identified to achieve the mission. This analysis can be considered a reasonableness check. Have we overstated what it takes to meet the mission? Have we stated characteristics that are not required to meet the mission? It is also appropriate to ask these questions about schedule and quantity needs. Overstating requirements is a way to avoid the commercial marketplace which is why FAR Part 11 stipulates that requirements are to be challenged when appropriate.

If it is determined that a new development is the only way to meet the agency's need, we want the contractor to incorporate commercial and nondevelopmental items as components of the new development. If the Government can't access the commercial market directly, an indirect approach should be used.

Requirements are captured in requirements documentation. FAR Part 11 establishes an order of precedence for these documents. This order of precedence emphasizes performance-based documents over detailed-design documents. We tell the contractor what we want in functional terms. The contractor determines how best to provide what we want.

### **Order of Precedence**

1. Standards and specifications established by law or executive order. For example the Resource Conservation and Recovery Act (RCRA) mandates the use of energy efficient products and services and recovered materials.
2. Performance -oriented specifications and standards. The government must design its needs in terms of outcome, not the method of accomplishment.
3. Detailed design-oriented specifications and standards.
4. Agency unique specifications and standards. These must be used only after all of the above have been considered and the agency still requires additional coverage. This should occur only rarely.

A performance document is a document of few pages compared to a detailed-design document.

Examples of requirements documents mandated by Law are those concerning nuclear power, pollution controls, food and drug safety, etc. Examples of NGS (Nongovernment Standards) are those adopted by professional societies such as IEEE, ANSI, SAE, ASME, etc. to establish standards for products, processes, and materials.

A detailed-design document tells the contractor what the requirements are and how to meet them. It should be an exception, not the rule. Telling people how to do something takes volumes while killing innovation and creativity. Telling people what you want an item to do takes fewer words and allows them to use their ingenuity to satisfy your need. Performance specifications include functional and physical interfaces. Functional and physical interfaces have a certain amount of detail in their description which is all right. What is not all right is telling the contractor how to meet the interface.

Sometimes a detailed design document is required. A good example is the Presidential Seal. The specifics of color, size, symbol, material, etc., have to be stated in detail to meet the need. Agencies sometimes have unique requirements but they should not be going off on their own for repetitive purchases.

It is important that the buyer and the user coordinate closely. The buyer should be guiding and helping the user with performance specifications and possibly even assisting in the writing of the specs or PWS. Also, the user may already be knowledgeable of the marketplace thereby reaffirming the need for close collaboration between buyer and user. After the Agency Needs/Requirements Analysis is conducted, and the key characteristics are identified, the next task is Market Research!

### ***Market Research Definition***

A standard commercial textbook defines market research as a process used to collect, organize, maintain, analyze, and present data for the purpose of maximizing the capabilities, technology

and competitive force of the marketplace to meet an organization's needs for supplies or services.

Research about the marketplace could go in many different directions depending on the purpose for which the information will be used. For example, information a company may need to determine whether to invest in a new product venture would differ from information needed by an investor who was trying to maximize growth in a portfolio of equities. Market research identifies the attributes within the marketplace of existing products, processes and services that may meet a need and the commercial business practices associated with the item.

### ***Legislation***

The Federal Acquisition Streamlining Act of 1994 specifies the preference for acquisition of commercial items to satisfy the needs of the government. Title 10 U.S. Code, Section 2377 specifically requires the Agency head to conduct market research.

(c) Preliminary Market Research.--

(1) The head of an agency shall conduct market research appropriate to the circumstances--

(A) before developing new specifications for a procurement by that agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercially available that--

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2). (added Pub. L. 103-355, title VIII, Sec. 8104 (a), Oct. 13, 1994, 108 Stat. 3390.)

### ***What is the Motive?***

Because market research is the foundation for building an effective solicitation and a successful contract, the FAR appropriately requires agencies to conduct market research at the earliest stages in the acquisition process. **The FAR actually requires market research be conducted in two separate stages (described below).** As we just discussed, researching the marketplace could take different paths depending on the purpose for which the information will be used. When market research is conducted by government acquisition personnel the focus or specific purpose of the research relative to the acquisition process will determine what information will be collected and analyzed.

### ***When to perform Market Research (Task 2)***

Market research should be conducted appropriate to the circumstances.

(1) before developing new requirements documents (specifications and standards). Ideally, contracting officers should partner with requiring activities on market research as soon as requirements are forecast, as apart of acquisition planning. Acquisitions usually begin with a narrative description of the government's needs. That description includes general statements of performance and functional characteristics, and should be thorough enough to permit the conduct of market research. Effective research will ascertain the availability of suitable commercial items to satisfy those needs, provide product and industry information, and identify existing systems and technology that can be used to develop the final requirements documents. In short, no new requirements documents should be developed before all questions are answered regarding current commercial market capabilities.

(2) under the Simplified Acquisition Threshold [(SAT) \$100,000 unless Presidential certified contingency operation (\$200,000)] **only when**: “adequate information is not available and the circumstances justify its cost.” This condition is recognition that market research takes time and



money. *For situations under SAT, existing knowledge about the market should be used to make your decisions, as even limited additional market research will seldom prove to be beneficial.*

(3) before soliciting offers with an estimated amount over the simplified acquisition threshold (SAT) or \$100,000. When used to support the preparation of a solicitation it can identify the extent of competition in the marketplace, the effects of those competitive forces, and the successful acquisition practices of others who have purchased similar items or services.

*The Federal Acquisition Reform Act of 1996 (FARA) provides for the use of SAP for purchases up to \$5 million or less when the contracting officer (CO) reasonably expects that only commercial items will be offered. Market research will tell the CO if only commercial items are expected, and therefore, can impact an acquisition strategy.*

**Market research information will differ depending on whether the research is being conducted to develop a requirements document, support preparation of a solicitation, or both.** Also, the skills required by the team conducting the market research will differ depending on the stage of the procurement process being supported. Market research early in the acquisition cycle is intended to ensure that, if commercial items are available to satisfy the government requirement, then those commercial items will be acquired - rather than a government-unique item.

### **Market Research is the First Step in Any Acquisition**

1. Before developing new requirements documents
2. Before soliciting any offers over the Simplified Acquisition Threshold
3. Before soliciting offers under the Simplified Acquisition Threshold only when adequate information is not available and cost is justified

**Component of effective acquisition planning.** FAR 7.102 requires acquisition planning and market research for *all* acquisitions to promote and provide for—

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable.

(2) Full and open competition or, when full and open competition is not required, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired. **FAR 7.105 requires that written acquisition plans document how the information obtained through market research was used in developing various elements of the plan.**

Failure to conduct market research may have significant consequences. Sole source solicitations, and procurements that limit competition, but are not supported by valid and well documented research, may be subject to protests which the General Accounting Office (GAO) would likely uphold. This could result in delays, as well as repurchase and settlement costs. Additionally, we could overlook some new technology, capability, process, or source that the commercial market has to offer. Therefore, good market research is not only a FAR requirement, it makes good practical and business sense for the government.

### ***What is the Purpose of Market Research?***

Market Research is conducted to determine whether matches exist between the commercial sources for commercial items and an agency's requirements. This includes off the shelf items and those that may require slight alteration. If items can't be used in standard form, market research is used to determine whether the items could be modified to meet the requirements, or whether the requirement could be modified, to a reasonable extent, to make the items compliant.

The goal of market research is to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. A

thoroughly executed market research process will provide information on the following:

- Existing products
- Capable sources, including small businesses
- Competitive market forces
- Generalized pricing information
- Varying levels of product performance and quality
- Commercial practices
- Support capabilities
- Successful acquisition practices of other organizations

**FAR Part 10 ( Market Research)\*\***

**FAR Part 11 (Describing Agency needs)**

**FAR part 12 ( Acquisition of commercial Items)**

**FAR Part 13 (Simplified Acquisition Procedures)**

**FAR Part 14 (Sealed Bidding)**

**FAR Part 15 (Contracting By negotiation)**

**\*\* This part completely revised**

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Additional objectives of market research are:

- Consider about any laws or regulation unique to what we are buying
- Find out about distribution and support capabilities of suppliers; maintenance and cost of upkeep.
- Small business participation or capability (set-asides rule of two, fair market price)
- What other required and mandatory sources compete for the same business.
  - FPI (UNICOR)
  - Handicapped or Blind (NISH/NIB)
- Are Federal Supply Schedules or ADPE contracts available?

Some of the information that can be gathered through market research is listed below. Market research can be expected to identify desirable systems and technology and perhaps potential vendors and their capabilities in support of

developing requirements statements. When conducted in support of preparing a solicitation for offers, market research can be used to identify the extent of competition in the market and, hopefully, successful acquisition practices and approaches for items or services.

- Desirable systems/technology
- Potential vendors and capabilities
- Competitive market forces
- Successful acquisition practices and approaches of others

Thorough market research will be of critical importance in describing the agency need, developing the overall acquisition strategy, and identifying terms and conditions appropriate for the item being acquired. Identifying “terms and conditions” is something totally new. It relates to a Part 12 requirement that specifies that, absent a waiver, any clause (over and above those prescribed by Part 12) must be consistent with standard commercial practice for the acquisition of the item as identified in market research.

The term "customary practice" is critical to the entire process of acquiring commercial items. Market research is the key to determining what in fact are "customary" terms and conditions for commercial contracts. Specific things examined during this process include:

- Customizing, modifying or tailoring practices.
- Terms such as warranty, buyer financing, discounts, etc.
- Laws and regulations unique to the item.
- Availability of items that contain recovered materials.
- Energy efficiency of available items.
- Distribution and support capabilities of suppliers.
- Size and status of potential sources.

Market Research and analysis shall be conducted to determine the availability and suitability of existing non developmental items prior to the commencement of a development effort, during the development effort, and prior to the preparation of any product description. Requirements shall be defined (including hardware, software, standards, data, and automatic test systems) in terms that enable and encourage offerors to supply non-developmental items and provide offerors of NDI and opportunity to compete in any procurement to fill such requirements.

***What information is collected as part of Market Research?***

In addition to the general information listed in the above section, the following specific questions should be asked.

1. Are there sources capable of satisfying the government's requirements?
2. Are commercial items available:
  - a. To meet requirements?
  - b. That could be modified to meet requirements?
  - c. That could meet requirements if the requirements are modified to a reasonable extent?
3. If commercial items are not available, are nondevelopmental items available:
  - a. To meet requirements:
  - b. That could be modified to meet requirements?
  - c. That could meet requirements if the requirements are modified to a reasonable extent:
4. To what extent could commercial items or nondevelopmental items could be incorporated at the component level.
5. What are customary industry terms and conditions regarding:
  - Warranties
  - Acceptance

Inspection  
Buyer Financing  
Maintenance Support  
Packaging and marking  
Pricing

6. What is the extent of competitive environment, including:

- a. Level of market competition
- b. Sources potentially capable of satisfying requirements
- c. The amount of competitive pressures on

Price  
Quality  
Product features  
Speed of technological improvements  
Energy efficiency  
Service  
Support

7. What are the environmental concerns:

- a. Extent of recovered materials used in market products
- b. Efficiency standards in the marketplace
- c. Market pressures on energy conservation and efficiency?

### ***Market Research Documentation***

Before any research is accomplished, the team should be aware of the FAR requirement for documenting the results. As stated earlier, there can be clear and far reaching consequences to not conducting market research, however, the consequences are the same if it is done but not documented properly. The records of essential agency needs, source list searches, and market information, as described above, should be available for easy incorporation into the research report. Other information gathered by team members may also be critical to the final determinations of capability. Such additional information may concern quality or questionable commercial practices, or observations of industry

trends. This information must be maintained by team members for incorporation into the report.

While agencies must document the results of market research "in a manner appropriate to the size and complexity of the acquisition", there is no specific format that must be used. The report should summarize the activities undertaken by those conducting the market research. Additionally, it should provide a logical basis for the team's determination of the existence of a commercial or nondevelopmental item to satisfy the agency's needs. The following topics are recommended for inclusion in a report if appropriate:

- An explanation of the acquisition's background, including its purpose and any special features.
- An identification of the market research team members (at a minimum, the buyer and the requirements official).
- A description of the agency's needs, in terms of their function, performance, and/or essential physical characteristics. This section should also discuss possible alternatives or modification to the needs statement or to the potential for trade-off analyses.)
- Identification of the desired or required schedule for the delivery of the end items.
- An explanation of the methodology that was used for compiling and refining the lists of potential suppliers, including the number of firms that were contacted and a list of the suppliers in the final consideration.
- A summary of the industry sources that were contacted and the types of information obtained from them.
- A summary of the customary commercial terms, provisions, and conditions, including payment, freight delivery, acceptance, and warranties.
- Identification of the price ranges discovered, possible reasons for variations,

and the potential for determining a fair market price.

- The Market Research, including a summary description of the available commercial or nondevelopmental items, along with their respective merits or shortcomings.

### ***Who Does Market Research?***

Though the FAR does not specify who performs market research, everyone on the acquisition team should be involved in some fashion. Ideally, contracting officers or a procurement team should partner with using/requiring activities on market research as soon as needs are forecast and as part of acquisition planning. If not possible prior to this point, contracting officers and their technical representatives should begin market research upon receipt purchase requests. Contracting personnel should be careful not to assume full responsibility for conducting market research. The customer has the capability to research the market and certainly possesses more technical expertise than contracting personnel. It is important to break the paradigm that “only contracting can talk to the “outside world.”

Market research is not new. Its impact on the Government's planning and procurement processes is new. FAR Parts 2, 7, and 10, and 11 have made it a primary activity that directly impacts the acquisition process through the commerciality determination and the commercial item solicitation. Market research continues throughout the pre-solicitation, solicitation and evaluation phases, as new information becomes available and as more decisions are made.

## **Roles of Participants**

### ***Requester***

It is incumbent upon the customer to present the appropriate request for contracting to buy a



commercial item. If customers do not provide commercial specifications, contracting cannot take advantage of the benefits of commercial procedures. Requesters must be aware that use of commercial items is mandatory, unless properly exempted, and their statements of work, specifications, and item descriptions are to be commercial. Organizations initiating requirements at base level need to be trained on their role in market research and developing commercial item descriptions. Since buying commercial items makes contracting easier, contracting personnel must be proactive in assisting requiring activities conducting market research. Likewise, the requester must do some market research and write conforming item descriptions for commercial items.

### ***Contracting***

Contracting performs two separate functions with respect to market research. The first is obviously to assist the customer in developing appropriate needs/requirements analysis documentation. The second is the actual conduct of market research. The next section will focus on the two types of market research, surveillance and investigation. Contracting should be continuously involved in the surveillance portion of market research to keep abreast of current market conditions. Contracting typically ends up performing more research than it should because they are most familiar with accomplishing product research when looking for sources. However, this paradigm must shift to bring the user/requester into the research mode before the requirement is set.

## Market Research Techniques

- government and industry regarding market capabilities to meet government needs, successful acquisition strategies, industry best practices, pitfalls to be avoided, and incentives that motivate industry.
2. Obtaining Source lists (Thomas Register, other contracting offices, state and local governments, trade associations, competition advocates home page).
  3. Reviewing the results of recent market research from similar acquisitions.
  4. Querying Government/commercial data bases (NASA, MAJCOMs, Dun and Bradstreet).
  5. Participating in interactive, on-line communication among industry, acquisition personnel, and customers.
  6. Publishing formal requests for information (in technical, scientific or business publications such as the *Commerce Business Daily*, as well as traditional synopses).
  7. Reviewing Catalogs/Product literature (especially on-line).
  8. Conducting interchange meetings or pre-solicitation conferences regularly (as a matter of course get industry involved as soon as possible)

Other techniques can be used as well; the objective is to gather as much information as possible to make the most efficient and effective decisions regarding buying commercial items. The art is to select those techniques that best fit the type of product or service you are buying.

Other sources for exchanging market capability information and publicizing requests for such information include:

- Trade shows and industry workshops
- Professional Associations and Societies

- Notices in the Federal Acquisition Computer Network (FACNET)
- Notices on the World Wide Web

The internet provides another vast and virtually unlimited information resource for market research. The internet has many advantages over traditional research methods, such as currency of information, cost effectiveness, worldwide access, and search capability. In fact many of the companies you will be dealing with have some sort of listing if not their own homepage on the internet. Appendix 1 of this guide lists many sites and descriptions to assist you.

Potential sources may be gathered from on-line services such as the Thomas Register, the Small Business Administration's Procurement Automated Source System (PASS), or the U.S. Department of Defense's Eagle Eye database (addresses in POC section).

FACNET should not be overlooked for its ability to solicit and exchange information between government and industry. You may want to consider sending a draft performance specification to qualified responders along with a questionnaire to determine a product's ability to meet agency requirements.

In addition to the above, agencies may have to:

- Create, modify or upgrade technical libraries.
- Promote active participation in professional societies.
- Subscribe to on line services.
- Promote attendance at technical/marketing symposia.
- Look for ways to train their acquisition professionals in market research techniques.
- Use synopsis of sources sought, to get information or sources from industry
- Seek other ways to keep their acquisition professionals current in the market place.

Remember we are not just seeking information. We are seeking to be knowledgeable about the marketplace so we can streamline the acquisition process. The objective is to meet the user's need with a reasonable product, in a reasonable time, and at a reasonable cost.

### ***Classifications of Market Research***

<b>Market Research information Sources</b>	
<p><b><u>Surveillance</u></b> (an ongoing function -- should not be dependent on request for information) Accomplished by:</p> <ul style="list-style-type: none"> <li>Trade Journals</li> <li>Manufacturer Catalogs</li> <li>New Product Announcements</li> <li>Industrial Shows/Conferences</li> <li>Unsolicited Proposals</li> <li>On-line Market information</li> </ul>	<p><b><u>Investigation</u></b> (Determine, with a high degree of confidence, what technology or products can satisfy user needs)</p> <ul style="list-style-type: none"> <li>On-line Product information Catalog systems</li> <li>Professional associations</li> <li>On Site Inspections</li> <li>Request for Information</li> <li>Test Reports</li> </ul>

Sources of information vary between the two above classifications of Market Research with some overlap. Surveillance can be characterized as active and continuous participation in your profession. Investigation can be characterized as focusing market knowledge to meet a specific maturing requirement or as directed research. Some potential sources of information are:

- Active membership in professional organizations such as the National Contract Management Association, etc.
- GSA Advantage on line services.
- Federal Catalog System.
- General Services Administration catalogs.
- Defense Logistics Agency catalogs.
- Dun & Bradstreet.
- Thomas Register.
- On Site Inspections.
- DOD Competition Advocates Forum ([www.acq.osd.mil/ar/cadv.htm](http://www.acq.osd.mil/ar/cadv.htm))

- SAF/AQC Deskguides which will cover commercial success stories ([www.govcon.com/](http://www.govcon.com/))
- Dodge Reports for constructions and services

### **Extent of Market Research**

The extent of market research will vary depending on factors such as *urgency, the estimated dollar value of the procurement, complexity, past experience, and the amount of information already available*. The bottom line is equate the amount of research to the level of your procurement. You will obviously expend less time researching the market for a \$50,000 procurement than you would for a \$2 million procurement.

Agencies should consider market research to be a continuing effort, rather than one that is isolated to specific acquisitions. Continuing surveillance of commodity markets can provide agencies with current knowledge of changes, advances, and trends in the technology and products that are of specific interest to the agencies. The development of a marketplace commodity database will significantly support agency determinations regarding the use of commercial items in subsequent acquisitions.

It should be noted that not every item will fit the definition of a commercial item. If it doesn't, so be it! Consider restating the need if possible, if not, use FAR parts 13, 14, and 15 to complete the acquisition.

### **Sources of Information**

Industry publications, periodicals, vendor associations, trade journals, marketing organizations, trade shows - any or all of these might be sources at which to direct your market research. Once you start looking, you will probably be surprised at how much information is out there. [A must is to get out and use the Web.] You might ask vendors to submit copies of their

standard commercial agreements, ask associations or industry groups for sample agreements, or even schedule a public meeting and ask interested industry folks for their input. (FYI, the National Association of Purchasing Management publishes a compilation of contract purchase order terms and conditions.) Whatever the means, your market research effort should generally match the size of your procurement action. The emphasis on market research is new; but as described above, market research will be critical to the successful conduct of your procurement action for commercial items. With these FAR changes, market research should become an ongoing activity for requirements personnel and contracting officers. Like commercial buyers, we will be expected to keep abreast of the latest developments in the areas from which our acquisitions are made. After the first time, market research should be a much less daunting task.

### ***Sharing Information***

Make sure you find a forum to share results of your success stories. This includes the websites listed in appendix 1. Chief among them are the SAF/AQC homepage and the Commercial Advocates Forum Page. These pages, and others like them, contain lessons learned or shop talk areas where you can express success stories or read and learn from others' mistakes. The shop talk area allows you to ask a question and get input from a variety of sources. Acquisition deskguides on the web at [www.govcon.com/](http://www.govcon.com/) will cover commercial item success stories. Also, DAU is creating a new CD with questions and answers on commercial items and Market Research which should be available February or March of 1997.

Numerous sources are accessible through the electronics catalog section of the SAF/AQC homepage these include:

- Government Electronic Mall (Listing of Companies either have schedules or want to do business with the government)
- The GSA on-line advantage system (listing GSA items and sources)

- The Air Force Country Store (shares resources specifically related to information technology)

**Product Literature:**

The FAR encourages COs to use an offeror's existing product literature to show product capabilities, rather than unique technical proposals (12.205). Product literature here means, for example, the product data sheet and instructions that come in the box with the VCR you buy. Typically, existing commercial product literature contains a wealth of information on capabilities, statistics, and performance that can be used to determine whether an offered item satisfies our requirement. That same literature can also be used to compare competing products.

***Results of Market Research, Making a Commerciality Determination -Task 3***

The results of market research will conclude (1) that there are sufficient commercial or nondevelopmental items in the marketplace, and enough sources are available to issue a procurement under the rules of FAR Part 12, Acquisition of Commercial Items (see Appendix B), or (2) that the item and sources are not commercial in nature, and a procurement must be issued under other parts of the FAR. If the results of the market research are inconclusive, the agency must make an attempt to review and revise their requirement so that commercial items could satisfy their needs. If that cannot be done, then the procurement cannot be issued under commercial item rules.

***Non Commercial Items***

Use FAR parts 13, 14, and 15. Include in your synopsis that the market research shows the item or service is not available in the commercial arena and Part 12 will not be used. You must document the effort you make in trying to reach a commercial action. Remember, our new goal is to buy as many commercial items and services as possible. Market research is not the end of the process but a step in the commerciality determination which is based on the data collected during the research process.

## **Putting the Puzzle Together**

Market research provides the technical and business information we need to know about the commercial technology/industrial base to support the acquisition decision process. Once we understand the capabilities of the contractor, the attributes of the product, and the commercial practices of the industry sector, we have acquired the first half of the body of knowledge needed to make a commerciality determination. Note that regardless of how we conduct market research, i.e... on line services, catalogs, site visits, professional symposia, we are always looking for four key things:

1. Functions/Performance/Interfaces as a measure of product attributes.
2. Schedule as a measure of contractors in house capabilities to deliver the product be it a test or production item, or a service.
3. Quantity as a measure of production capability.
4. Industry sector commercial business practices to provide information for possible tailoring of the solicitation.

We now have half the information we need to make a commerciality determination. The other half we obtain from the requirements analysis mentioned earlier. We use requirements analysis to identify the key characteristics that are then captured in the most appropriate of the requirements documents just covered. These key characteristics give us the functional/performance factors the user expects of this yet unidentified item as well as information on the operational environment in which the user will use it.

Note that in requirements analysis we are trying to determine what a yet-to-be- identified item or service has to do to meet a user's need. We are not trying to decide which item/product will meet the user's need. That is an important distinction. Because the only way to compare requirements analysis to market research is by comparing functions, performance and interfaces. That is why we ask the same questions in both market research



and requirements analysis. In market research, we ask what functions the product performs. In requirements analysis, we ask what functions need to be performed to meet the need/requirement.

### **Requirements Analysis**

#### **Functions/Performance/Interfaces (Key Characteristics)**

- What the item must do
- How well it must do it,
- In what environment

#### **Schedule**

- User's desired delivery schedule

#### **Quantity**

- User's desired quantity

We are also assessing the reasonableness of the user's schedule and quantity needs. After we complete our requirements analysis we will be ready to capture the essential functions a system must perform to meet a need, and how well each function must be performed. We will also have a better understanding of the environment in which these functions are performed, and have a better ability to translate these requirements into a commercial item description or a performance specification. Additionally, we will have determined the user's schedule and quantity requirements so they can be captured in an acquisition strategy. By combining requirements analysis and requirements documentation we have described the agency needs. Describing agency needs gives us the second half of the information we need to make a commerciality determination. Remember, both halves resulted from the same need. One half analyzed the capabilities of the marketplace to meet the need, the other half analyzed the key characteristics an item must possess to meet the need. Now it is time to compare the results.

## **Commerciality Determination**

We now put the halves together and compare our market research and requirements analysis to make a commerciality determination. This decision should ultimately rest with the CO (with the user's concurrence), since he or she must then proceed with a commercial item solicitation under FAR Part 12, or decide that the requirement cannot be satisfied by a commercial or nondevelopmental item and must be procured through other parts of the FAR.

When results indicate that commercial or nondevelopmental items are available to meet the agency's needs, and that existing sources in the marketplace are capable of providing them, the acquisition should proceed.

Market research tells us what the commercial market place can provide and how the commercial market place conducts business. Requirements analysis tells us what an unidentified item must do to meet a need and when the user wants the need met. The greater the overlap between our information from market research and our information from requirements analysis, the stronger is the case for a commercial item. If there is no overlap, or only a slight overlap, we must revisit the need with the user (modify the need? restate the requirement?, challenge unique requirements?) We are to challenge requirements that exclude commercial items. If a commercial item procurement is not possible, market research provides data on the possibility of a nondevelopmental item procurement. If a nondevelopmental item is available to meet the agency's needs, and existing sources in the marketplace are capable of providing them, the acquisition should proceed.

If the research leads to the conclusion that existing commercial or nondevelopmental items could be modified to meet the agency need, the team should fully explore that possibility. Modifications that are minor or that are customarily made in the commercial marketplace are acceptable,

as provided in the definition of commercial item. However, many of the cost, risk, schedule, and supportability benefits of the commercial item may be jeopardized by the modification effort. For example, the requirement to submit cost or pricing data exempts commercial items. Therefore, the agency and potential suppliers should carefully evaluate all of the implications of modifying commercial items.

When the research results indicate that existing commercial or non-developmental items could meet the agency's needs if the needs were modified to a reasonable extent, the team members should conduct trade-off analyses to consider possible alternative requirements. Some performance parameters may possibly be relaxed in order to achieve overall best value while still meeting the users needs.

If the market research provides clear evidence that no commercial or non-developmental item can satisfy the government's needs, FAR Part 12 does not apply, and the synopsis of the proposed acquisition should identify the regulation's inapplicability. Of course, as a last resort we have a new development procurement option. But even here we expect market research to provide us with the capabilities of the contractor(s) to integrate commercial items at the subsystem and component levels of development. We must remember that whatever procurement path is chosen, it must satisfy the agency's need.

After making a commerciality determination, the contracting officer must proceed, in conjunction with the customer and technical personnel, to develop the most effective acquisition strategy for the particular job. That is Task 4 outlined in the first section of this guide. The acquisition strategy is the overall concept of obtaining goods and services for particular efforts or programs, and Market Research plays a role here as well.

Hand-in-hand, market research and requirements analysis will encourage agencies to

take an acquisition path that will meet the user's need more quickly and more efficiently. Prolonged and costly development efforts must become a relic of the past. Pre-solicitation activity must define the capability of the marketplace to meet the user's need and challenge the user to make the trade-offs necessary to promote commercial item procurements.

The Government is committed to making commercial item procurements the preferred way of conducting acquisition. Nondevelopmental item procurements the second choice, and new development procurements the final choice. The user's need is paramount but not to be stated in ways to avoid commercial items. Market research is mandatory to define the capabilities of the marketplace to meet the need with commercial or nondevelopmental items, or to define ways to restate the need to promote commercial or nondevelopmental items. New development procurements are the choice of last resort. Even there, market research must provide the information on the capability to integrate commercial items into subsystems and components.

#### ***Developing the Acquisition Strategy - Task 4***

In accordance with policy stated in FAR 7.102, agencies shall perform acquisition planning and conduct market research (see Part 10) for all acquisitions in order to promote and provide for --

(1) Acquisition of commercial items or, to the extent the commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable )10 U.S.C. 2377 and 41 U.S.C. 251, et seq.); and

(2) Full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.D. 2301 (a) (5) and 41 U.S.C. 253a(a)(1).

### **Procurement Planning**

Maximum and effective use of competitive market forces

Maximum practicable use of recovered materials

Promoting energy efficiency and conservation

When planning an acquisition, acquisition personnel should maximize the use of competitive market forces. Through market research, the level of market competition and the number of potential sources capable of satisfying requirements should be identified. The extent of competition in the market and the nature of that competition should be factored into the acquisition strategy. Competition will dictate price, quality, available features, the speed of technological improvement, the energy efficiency of the items, and the quality of service and support. **The solicitation and contract should be structured to reflect the level of competition in the market and to maximize competitive pressures.** If limited competition appears in the market, reasonably modify the requirements to expand the number of potential sources.

Market research also is used to identify information specific to the item being acquired concerning the availability of items that contain recovered materials and items that are energy efficient. It is a required part of the Written Acquisition Plan. Under section (b) Plan of Action/ Sources. Contracting officers must indicate the prospective sources of supplies and/or services that can meet the need. Required sources of supplies or services (see Part 8) should be considered. The extent and results of market research should be addressed with respect to their impact on the various elements of the plan.

If not possible prior to this point, contracting officers should begin market research upon receipt and acceptance of purchase requests. Don't limit early industry involvement early in the process. Take advantage of private sector expertise by issuing draft RFPs or request for information when possible. The industry perspective is an essential

part of the insight necessary to develop a good acquisition strategy, prepare an RFP, select a contractor and execute the contract. When industry is engaged early in competitive actions the acquisition is less likely to encounter problems, and less likely to be protested. Maximizing early industry involvement and partnering, minimize the obstacles in contracting.

Additional research is often performed during the solicitation and evaluation phases, as new information becomes available and decisions are made.

### **Determination of Need**

Market research gives us knowledge in four areas:

1. Functional/performance capabilities of the product and interfaces of the product with the operating environment (which relates to ability to meet the user's functional/performance/interface requirements).
2. Production capability of the industry sector/contractor (which relates to ability to meet user quantity requirements)

**What** does the product do?

**How** well are the functions performed?

**Where** is the product used?

**Under what** conditions is the product used?

**How** often? **How** long?

**Who** uses the product?

3. Delivery capability of the industry sector/contractor (which relates to ability to meet user schedule requirements).

4. B  
business information that can be used to identify customary commercial terms & conditions for that industry sector.

The most visible factor to the user is the performance of the product, where performance

is defined by the functions performed, how well they are performed, and under what conditions. So, it is imperative that during market research we ask lots of questions about the attributes of the product. Eventually, we will have to compare the attributes of the product to the capabilities needed by our user.

We will also have to compare our user's quantity and schedule needs to the capability of the contractor to produce and deliver the product .

One of the most important factors to the contracting officer is the business information that will be used to tailor the solicitation.

### **Policy**

Market research is the responsibility of the Government and should not be passed to the contractor. The Government must actively monitor the marketplace and be capable of researching the market without making unwarranted requests for documentation from potential sources. This restriction was placed in the FAR because market research is a proactive and continuous effort on the part of the Government. Government agencies may have to promote active participation of their personnel in professional societies, to upgrade technical libraries, and to provide on line access to their market researchers.

This policy is intended to reduce the paperwork burden on both Government and industry. Objectives to reduce mounds of paper are established. These objectives then provide a framework for discussions. The Government promotes early communication with industry through meetings and draft documentation reviews in order to improve the quality of requests for proposal and specifications. We must continue to be even-handed and impartial in our dealings with potential sources and contractors, and to guard internal source selection information.

Clearly, it is the intent of the FAR that market research be part of your daily responsibility.

### ***Building a solicitation***

Market research can identify standard commercial practices, therefore it is the foundation for building an effective solicitation and a successful contract. This is particularly true for commercial items and services solicitations and contracts because government contracts personnel are limited, by law, to include only terms and conditions consistent with standard commercial practices.

When we look at building a solicitation for commercial items, we will see just how important information obtained through market research is to that process. To put it simply, **we no longer have government imposed terms that appear in the solicitation. We have a statutory requirement to acquire commercial items when they are available. When we acquire those commercial items we have a second statutory requirement to use "standard commercial terms and conditions."**

What are standard commercial terms and conditions? You get the answer through market research because the "standard" differs depending on the commodity you are acquiring. As a quick

Market Research is critical to building a successful solicitation for commercial items.

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example of this, let's look at express warranties. What is the standard length of a commercial warranty? We can't answer. We have to know the commodity we're buying. Now let's say the commodity we're talking about is automobiles. Can we answer the question, "What is the



standard length of an automobile warranty?" Again, the answer is no. We would have to conduct market research to identify the standard warranty terms being offered. This is true of a multitude of terms and conditions that govern the sale of commercial items in the commercial marketplace.

### **Identifying Customary Industry Terms and Conditions**

Warranties  
Acceptance  
Inspection  
Buyer financing  
Maintenance support  
Packaging and marking

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These are just some of the terms and conditions that govern the sale of commercial items in the commercial marketplace that we will identify through market research so that our solicitation can be structured to include "standard commercial terms and conditions."

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### **Market Research**

Identifying commercial practices for customizing, modifying, or tailoring items  
Identifying normal distribution and logistics support capabilities

Just as we must identify standard terms and conditions used in the marketplace, we also must obtain information about commercial practices regarding customizing, modifying, or tailoring items to meet customer needs.

Market research is also used to determine the normal distribution and logistics support capabilities of the commercial market. If an item is in the commercial marketplace, it is being distributed and supported. The government should plan the acquisition and

structure the solicitation and contract to maximize use of commercial distribution and support capabilities. Just as the commercial market offers the government access to state-of-the art technology and production efficiencies, it also offers efficient, cost-effective distribution and support capabilities.

### ***Special Requirements***

Offers should make use of existing product literature when they are submitted. Market research ahead of time will show that the literature is generally acceptable and descriptive enough from which to make an award. This will minimize government unique technical proposals and should hold seller's costs down. Commercial offers may also come with multiple products, allowing us to make the decision on which to use. The commercial solicitation may allow less than the normal 30 day response time and may use a combined Commerce Business Daily (CBD) synopsis/solicitation.

Contracts for commercial items should be Firm Fixed Price or FFP with an Economic Price adjustment only (indefinite delivery is acceptable). The contract should use the offeror's Quality Assurance system unless customary practice permits in-process inspection. And finally, commercial contracts should require warranties consistent with customary market practices.

When awarding these efforts past performance should be considered, but no preaward survey should be conducted unless the cost is justified. Only request Technical data customarily provided to the public, and make award on the SF 1449. Market research should also highlight any other additional customary commercial practices if:

They are essential to the business arrangement

In government's best interest, and

Not precluded by law or Executive Order

## ***Terms and Conditions***

This is likely to be the primary focal point for persons involved in market research: establishing the terms and conditions that are customarily used in commercial contracts for the item or items being acquired. FAR 52.212-4 sets forth some typical generic terms and conditions (T's & C's), but those may or may not work for your particular acquisition. Customary commercial T's & C's are likely to vary significantly among various commodity groups. It is the responsibility of the contracting officer to ensure that, to the maximum extent practicable, only those clauses required to implement provisions of law or executive orders or those that are consistent with customary commercial practice are used in contracts for commercial items 112.301 (a)].

Many commercial firms have two preprinted forms showing their T's & C's: one is used when the firm is the purchaser of goods, the other is used when the firm is the seller. Typically the seller and buyer T's & C's are significantly different - even for the same firm. That's because the interests of the buyer and the seller in a transaction are significantly different, and the T's & C's are designed specifically to protect those differing interests. In the commercial sector, virtually all T's & C's are negotiable, and most contracts end up being a negotiated compromise of buyer and seller T's & C's that balance and protect both parties' interests.

FAR Part 12 allows CO's to accept offers showing different T's & C's. Your solicitation should indicate which T's & C's are negotiable (allow consideration of alternatives that may be offered) and which are not. You should be aware that there are differences in seller and buyer T's & C's, and know that you don't have to accept the offeror's terms. Your market leverage is likely to be the key. If your buy is small, the seller may not find it worth his time to negotiate T's & C's with you; he might just say, "These are my terms, take them or leave

them." But if you are negotiating a large contract, by all means use that market leverage to negotiate T's & C's that protect and are favorable to the government's interests.

### **Evaluation of Differing Terms & Conditions**

-This is a whole new ball game for government procurement persons, and it's likely to be a difficult area. The possible alternatives that may be offered for consideration are virtually limitless. For one simple example, consider the warranty. For a best value acquisition of scientific equipment items, Firm X offers a one-year warranty while Firm Z offers a higher price but includes a two-year warranty. During negotiations, Firm X increases his warranty offer to eighteen-months. Both firms' prices are unchanged. Which is better? The CO and requirements personnel will have to consider whether the additional months of warranty coverage are worth the higher price. Of course, this is just one element of the overall evaluation, singled out here to demonstrate the point. There may not be a single correct answer. It's a judgment call, allowing full exercise of your professional expertise. Whatever the choice, you must fully document the rationale for the decision.

### ***Tailoring***

Contracts for commercial items shall, to the maximum extent practicable, contain only those terms and conditions that are:

- Necessary to implement statutes and executive orders, and
- Determined to be consistent with "standard commercial practice."

Hence, provisions and clauses in FAR Part 12 shall be used in all acquisitions for commercial items, and shall be the ONLY provision and clauses required in contracts for commercial items. This maintains limited flowdown to subcontractors and encourages

small business involvement. The provisions and clauses are as follows.

- 52.212-1, Instructions to Offerors - Commercial
- 52.212-2 Evaluation (Optional)
- 52.212-3, Offeror Representations and Certifications - Commercial Items.
- 52.212-4, Contract Terms and Conditions - Commercial Items.
- 52.212-5, Contract Terms and Conditions required to implement statutes or Executive Orders - Commercial Items (Equal Opportunity and similar Laws)

However, because of the broad range of commercial items acquired by the Government, variations in customary commercial practices across markets and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate Market Research tailor some provisions to adapt to the market conditions for each acquisition.

**Instructions to Offerors**--Commercial items at 52.212-1, contains a single streamlined set of instructions unique to government procurement of commercial items. It is based on existing FAR language, but has been significantly simplified and tailored for commercial item acquisitions. For example, it deals with thing such as submission of offers, multiple offers and late offers. It is incorporated into the solicitation by reference and can be tailored further, if necessary. (FAR 12.301, 52.212-1)

**Offeror Representations and Certification**--Commercial Items at 52.212-3 includes a single consolidated list of certifications and representations required to comply with laws or executive orders (not otherwise eliminated by FASA) that may be applicable to commercial items. This is attached to the solicitation and is generally not tailorable. (FAR 12.301,52.212-3)

Contract Terms and Conditions--Commercial items at 52.212-4 contains terms and conditions that are consistent with customary commercial practice and which generally address the "core" areas covered by commercial contracts. Unique language in this clause addresses:

- Acceptance
- Changes
- Excusable delay
- Payment terms and conditions
- Termination for convenience
- Warranty
- Compliance with laws
- Claims

While it's impossible to be "universally standard," this clause comes close. It is incorporated by reference and it allows the contracting officer to tailor elements to the particular item and market. Note: No unilateral changes are allowed (unless tailored for same due to commercial practice). (FAR 12.301, 52.212-4)

Contract Terms and Conditions Required to Implement Statute or Executive Orders--Commercial Items at 52.212-5 includes in it 24 existing FAR clauses that implement statutes or executive orders that may be applicable to commercial item acquisition. The contracting officer will indicate which clause applies to the acquisition. The clause provides that the contractor is required to include only our FAR provisions in subcontract for commercial items. They are:

- Equal Employment Opportunity
- Affirmative Action for Special Disabled and Vietnam Era Veterans
- Affirmative Action for Handicapped Workers

Part 15 clauses should be added if necessary.  
Comptroller General Examination of Records

Authority is included. This clause is not tailorable without FAR deviation (FAR 12.301,52.212-5).

**Evaluation**--Commercial Items at 52.212-2 is an optional provision. It contains the framework for a simplified evaluation tailored for offerors of commercial items. When evaluation criteria are used, the contracting officer may use this provision and establish specific evaluation factors. When this provision is not used, contracting officer must include similar provisions in an addendum. Whatever provision is used must include a statement of the relative importance of the evaluation factors and the relationship of the non-price factors taken together to price. **\*Note: This is a key to success, you need to state clear evaluation criteria and explain what the vendor needs to provide for evaluation.** This provision highlights the best value approach and can be tailored to each acquisition. Contracting officers may insert other clauses that are determined to be customary practice for that particular buy by using an addendum. Note the tremendous flexibility this provision gives to the contracting officer. (FAR 12.301,52.212-2)

The provisions and clauses established in Part 12 are intended to address, to the maximum extent practicable, customary commercial market practices. However, because of a broad range and variations in customary practices, contracting officers may, after conducting appropriate research, tailor 52.212-1 and 52-212-4 to adapt to market conditions. These statutory provisions of 52.212-4 cannot be tailored:

- Assignments
- Payment
- Other compliances
- Disputes
- Invoice
- Compliance with laws

- Unique to government contracts.

Provisions may not be tailored in a manner inconsistent with customary practices unless a waiver is approved in accordance with agency procedures. Tailoring is accomplished by adding an addendum to the solicitation and contract. (FAR 12.302)

Agencies may require use of other provisions and clauses only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the Senior Procurement Executive or Representative on the FAR Council.

New provisions and clauses are intended for a wide range of commercial items, but may require tailoring. This is certainly new to the acquisition community, however, FAR 12.301(b) allows (based on market research information) the contracting officer to tailor the provision at 52.212-1 and the clause at 52.212-4 to incorporate customary terms and conditions of the commercial market for the requirement. The FAR encourages tailoring especially if the commercial terms and conditions would be appropriate in concluding a business arrangement, satisfactory to both parties, and not otherwise precluded by law or executive order.

The Contracting Officer(CO) may tailor provisions and clauses to adapt them to the market conditions, variations in customary commercial practices across markets, and include any other necessary terms and conditions such as options, ordering pricing and financing.

However, COs may NOT tailor terms and conditions of 52.212-4 that implement statutory requirements (e.g., assignments, disputes, payment, invoices, other compliances, and compliance with laws unique to Government contracts).



Contracting Officers may, at their discretion, incorporate other provisions and clauses provided the additional provisions and clauses are consistent with customary commercial practice. For example, contracting officers may include provisions or clauses related to the use of :

- Indefinite delivery contracts(FAR 16.505)
- Options(FAR 17.208)
- Recovered materials FAR 23, 12.301(d)]

Also, Contracting Officers may change the specific clauses (or portions thereof) to meet commercial standards. As an example let's take the clause at 52.212-4, Contract Terms and Conditions - Commercial Items. The clause is available in full text at Appendix 2. As mentioned above there are certain parts of the clause that MAY NOT be tailored. However, let's take the limitation on liability section as example. The clause states :

Limitation of liability. Except as otherwise provided by an express or implied warranty, the contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items. Well, what if the commercial standard is the contractor "is" liable? The contracting officer may change the clause with concurrence of the contractor, all other stipulated portions of the clause will remain unchanged.

Finally, the mandatory provisions and clauses in FAR Part 12 do not have dates associated with them. They can be modified at the contracting officer's discretion. If the clauses require revisions that are not consistent with commercial rules, the Head of the Contracting Activity (HCA) must approve the waiver.

The actual act of tailoring one of these clauses is to attach and addenda to the solicitation and contract. The contracting officer shall indicate in Block 26 of the SF 1449 if addenda are attached. The addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other items on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as option, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

### ***Quality Assurance***

Acquisition Reform impacted another area quite significantly - Quality Assurance. We're essentially out of the business of quality assurance (12.208). No government inspection is allowed before the contractor tenders items for delivery unless in-process inspection is customary commercial practice for the item being acquired.

We can inspect (after tender), and can reject non-conforming supplies. And, if it's customary commercial practice (if we're buying airplane generators, and commercial firms that buy airplane generators typically perform in-process inspections during production of those generators), then our contract can allow us to conduct **those same** in-process inspections. But realistically, formal inspection of supplies is likely to become increasingly less commonplace under the new rules. Instead, we're going to rely on the integrity of our contractors to deliver acceptable products - yet retain contractual protections for those instances where we later find unacceptable ones.

When we contract for commercial items, we are at the same time contracting for that firm's

commercial quality assurance system - whatever that is. Thus, product quality is likely to become a more significant factor in award decisions. If it is appropriate, structure your evaluation to score more heavily those firms that have independently been recognized (ISO 9000, Baldrige Award, etc.) as quality suppliers. Consideration of past performance in award decisions can help us avoid suppliers of marginal (or worse) commercial items, and rate quality contractors more highly. Finally, the contract warranty provisions should provide another measure of protection to ensure that we receive products of satisfactory quality.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in process inspections by the Government shall be conducted in a manner consistent with commercial practice.

### ***Market Acceptance Criteria for Commercial Items***

Market Research may also be used to support "commercial market acceptance" criteria in solicitations. Market Acceptance is another tool used in the acquisition of commercial items to manage risk. It is an agency's requirement that an item must have performed in a certain way in a specified environment approximating the agency' intended application. It is a way of assuring that the products offered have the maturity (reliability) and performance to meet the agency's need. When acquiring commercial items under FAR Part 12, agencies may "under appropriate circumstances" require offerors to demonstrate that offered items have achieved commercial market acceptance.

When an agency refuses this, it must specify exactly what that means in the context of the acquisition. The meaning can vary

widely depending upon what benefit the agency is attempting to gain by using the market acceptance strategy. Both commercial and non-developmental items may be offered to fulfill the requirements of the agency's request for proposal. Some examples of market acceptance criteria include requirements that an item must:

- Have been previously sold to commercial or other customers.
- Have been used by customer for a specified period of time.
- Have been used by \_\_\_ different customer within the last \_\_\_ years.
- Have met specified reliability and performance requirements
- Be supported by specified maintenance and logistic arrangements.
- Have been produced a specified number of times.
- Have been in operation a specific amount of time.

These requirements are written to solicit a reliable contractor, that produces a reliable product, provides reliable support, and does so in a timely manner.

Use of market acceptance may be appropriate if an agency determines that previously developed items have demonstrated a capability to operate reliably in a specified environment. The agency has established its requirements documentation the key characteristics an item must have to meet an agency need, and has established the evaluation criteria. There are some key questions to ask:

1. Do items exist that possess the attributes to meet the agency's documented minimum needs?
2. Does the agency want to pursue a market acceptance strategy?

Market research provides the information from which it can be determined whether previously developed items exist that can meet the agency's needs and what methods are used in the market place to assure reliability. Then it must be shown, through a careful analysis of the intended application and the marketplace capabilities available, that the optimum strategy for meeting the agency's needs is to require items that have been market-tested or field-proven in specified ways. The following are examples of rationale that could support market acceptance criteria.

- To eliminate costly, time consuming field testing and debugging of complex items.
- To preclude untested or experimental units.
- To assure compliance with Federal safety and environmental requirements/standards.
- To assure an item can be fielded quickly enough to meet an urgent requirement.
- To assure an established end item is routinely supported by spare and repair parts.

Market acceptance criteria itself may be tailored; it may be whatever can reasonably be demonstrated based on past experience, engineering analysis, market research, and similar rational bases to be an indicator that the item will meet the intended application.

The FAR cautions that market acceptance cannot be used as a sole criterion to evaluate whether an item meets government requirements. This means that the fact that an item has been sold to, or otherwise accepted by, commercial customer does not in itself indicate the item will meet the agency's needs.

An "appropriate circumstance" the agency's minimum need is for an item that has demonstrated reliability, performance or product support record in a specified environment. An example of an "inappropriate circumstance": When new or evolving items may meet the

agency's needs. For example, a requirement for field-proven items over a long-term contract in a rapidly evolving technological field could be too restrictive of competition, because it could not rationally be demonstrated that an item that was field-proven today would be the best item for meeting the agency's needs several years from now. Therefore, the agency's requirement for a field-proven item was unreasonable in that context.

The key to a successful market acceptance strategy is to maintain a rational relationship between the market acceptance criteria and the agency's legitimate requirements. In developing "commercial market acceptance" criteria for the solicitation, ensure that the criteria:

- Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need.
- Relate to an item's performance and intended use, not an offeror's capability.
- Are supported by market research
- Include consideration to items supplies satisfactorily under recent or current Government contracts, for the same or similar items.
- Consider the entire relevant commercial market, including small business concerns. do not exclude the products of small businesses simply because those products do not enjoy the market share of products form large businesses). (FAR 11.103)

### ***Documentation Required***

CO determinations regarding "customary commercial practice" for any particular acquisition are almost certain to have a significant impact on the conduct of that procurement. Thus, it follows that those

decisions may be subject to protest. Complete documentation of market research, along with the considerations and rationale for resultant determinations, will be essential.

### ***Researching Market Financing Practices.***

When performing market research, be alert for signs that buyers customarily finance sellers. The pre-FASA FAR discouraged the use of Government contract financing for sellers of commercial items. When such financing was provided, the mostly common form was "Progress Payments Based on Cost". The post-FASA FAR recognizes that buyer financing may be a customary market practice for some commercial items. Hence, subpart 32.2 provides contracting officers the new financing choices while precluding use of such Government unique financing as progress payments based on costs (absent advance approval as provided in agency FAR supplements). If buyer financing appears to be a customary market practice, ascertain the:

- Extent of which other buyers provide contract financing for purchases in that market.
- Overall level of financing normally provided.
- Amount or percentage of any payment equivalent to commercial advance payments (as defined at FAR 32.202-2)
- Basis for any payments equivalent to commercial interim payments (as defined at 32.202-2), as well as the frequency, and amounts or percentages.
- Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments. (FAR 32.202-3)

### **Types of Commercial Item Buyer Financing**

Two basic types of financing are available when contracting for commercial items: (FAR 32.202-2)

1) Commercial advance payments - Payments made before any performance of work under the contract. Commercial advance payments may NOT total more than 15 percent of the contract price.

2) Commercial interim payments - Payments made after the contractor has begun work under the contract but prior to acceptance (payments for accepted deliverables delivery payments). For example, if the contractor has assigned parts or components from inventory for use in performing the contract, work as commenced and the 15% limit no longer applies.

The steps in establishing Terms for Commercial Item Buyer Financing can be found in FAR 32.202-1(a).

When performing market research, likewise be alert for signs that seller customarily finance buyers. Since the Government cannot accept financing from sellers, the Government prices should be correspondingly less than commercial prices that are based on seller financing. The Government pays on delivery!

### ***Bundling***

Contracting Officers must examine the market place for potential consolidation of requirements (bundling). This is critical to the success of any such effort, and is also very important to the small business community. Take a moment to review attachment 4, Contracting Policy Memo 97-C-03 and its attachments. Note that prior to contracting for a new requirement or a follow-on to an existing requirement that includes consolidation of contract requirements, the contracting officer shall conduct an analysis to determine if



consolidation provides significant benefits. Prior to the exercise of contract option that consolidates requirements, the contracting officer shall conduct such analysis if it was not conducted at the time of initial award. In order to consolidate requirements the market research analysis must support significant benefits in the terms of reduced life cycle costs, improved services or both.

### ***Commercial Activities Services***

In the case of direct conversion of commercial activities to contract, the contracting officer must make a determination that this is the proper course of action based on a market analysis. Attachment 5, Air Force Costing Policy and Procedures for Cost Comparisons and Direct Conversions, dated 6 September 1996 provides procedures on direct conversions. AF/PE guidance shows contracting as the OPR for this analysis. The contracting officer develops a range of contract cost estimates, based upon at least four comparable service contracts. Cost adjustments for differences in scope may be necessary. Then the contracting officer compares the range of estimates to the maximum acceptable contract bid price and determines the cost effectiveness of the proposed conversion. Make sure to work closely with the local manpower office. The type of labor classifications, rates, and other benefits must be considered when accomplishing such an analysis. Manpower will have the appropriate information for you to compare to what you find in the marketplace. Don't be shy about searching all market alternatives. The internet is a great resource. Not only can you compare private or "for profit" functions, but look at other government agencies including Federal, State, and local. For example, if you are looking to outsource library functions, consider comparing data from community libraries and university libraries. These are all part of the local market. When doing your analysis be sure to take into consideration:

- differences in contract requirements such as hours of operation, quantities

- wage rates
- pricing breakouts, some commercial contacts are bottom line and don't break out Labor, other direct cost or indirect costs
- modifications
- performance periods

Attachment 6 provides an outline for documenting the direct conversion market analysis.

### ***New initiatives***

FARA (sec. 4202) permits the use of simplified acquisition procedures (SAPS) for amounts greater than the simplified acquisition threshold, but not greater than \$5 million when the contracting officer reasonably expects, based on the nature of the property or services and market research, that offers will include only commercial items. In these cases, the SAPs require a notice in the Commerce Business Daily and permit all responsible sources to submit an offer which shall be considered by the agency. The regulation can include flexible deadlines for the issuance of solicitations and submissions of offers. A Justification and Approval is required for sole source procurements. The contract file should include a written discussion of the procedures used in awarding the contract and the number of offers received. The solicitation need not include a statement of the evaluation factors and subfactors nor their relative importance. This special SAP authority expires at the end of a three year period, beginning on the date of the issuance of final implementing regulations. In order for the CO to ascertain this information and feel comfortable with that assumption he or she conducts market research.

New changes to FAR Part 15, which governs negotiated contracts were drafted by the Federal Acquisition Regulatory Council (FARC), and submitted to the Federal Register for comment before they take effect. The changes will give COs greater latitude and take advantage of market research techniques. The

proposed changes would give contracting officers the ability to eliminate offerors based on an evaluation of their initial proposal. The goal is to restrict the competitive range to only those companies that have "the greatest likelihood of award." Currently, all offerors that have a "reasonable chance of award" are admitted into the competitive range unless proposals are grossly deficient. A final ruling on the proposed changes expected soon.

Use past performance, price, technical merit and *market research* to help determine which of the initial competitor' proposals, based on solicitation criteria, should be retained, and which should be rejected, in effect, the change means that competitors initial proposals will compete against one another and only the most preferred will survive. In the past, bids were evaluated independently and not against one another until later stages of competition.

## Definitions

### *Commercial component*

means any component that is a commercial item.

### *Commercial item means--*

a) Any item, other than real property, that is of a type customarily used or nongovernmental purposes and that

(1) Has been sold, leased, or licensed to the general public; or,

(2) Has been offered for sale, lease, or license to the general public;

b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for--

(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e)

of this definition that are of a type customarily combined and sold in combination to the general public;

e) Installation service, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services--

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the federal government with such services as the source uses for providing such services to the general public;

f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. this does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

g) Any item combination of items, or services referred to in paragraphs (a) through (f), notwithstanding the fact that the item combination of items, or service is transferred between or among separate division, subsidiaries, or affiliates of a contractor; or

h) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

***Component***

means any item supplied to the Federal Government as a part of an end item or of another component

***Market Prices***

are current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated from sources independent of the offeror.

***Market Research***

is collecting and analyzing information about the appropriate market available to arrive at the most suitable approach to acquiring, distributing and supporting supplies and services that satisfies the agency's needs.

**Nondevelopmental item**

means-

a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

b) Any item described in paragraph (a) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

c) Any item of supply being produced that does not meet the requirements paragraph(a) or (b) solely because the item is not yet in use.

### ***Changes based on Federal Acquisition Reform Act***

1. Suppliers of commercial items are exempt from the requirement to submit certified cost or percent data and the Truth in Negotiations Act.

2. The Contracting Officer shall require data other than certified cost or pricing data only to the extent necessary to determine price reasonableness

- data includes appropriate information on the prices for same or similar items previously sold

- a reasonable limitation exists on requests for sales data

- the Contracting Officer must limit the scope to a format regularly maintained by contractors in commercial operations

- statement must be made that information received is subject to FOIA

- CAS is not mandatory on commercial items over \$500,000

- Deletes post award audit authorities relating to data to support the exception

3. Simplified procedures apply to certain commercial items

- Applies to supplies and services for amounts greater than Simplified Acquisition Threshold (SAT) but not to exceed \$5,000,000

- Offers must include only commercial items

- must allow for maximum participation

- Prohibits sole source

- Law has sunset provision (expires in 3 year period)

4. Definition of Commercial Item changed

- item sold in substantial quantities to the general public offered to the government in the same form

- excludes bulk cargo

- list of inapplicable laws in FAR

- based on established catalog or market price



## **Questions and Answers**

### **Is extensive Market research required for every purchase under Simplified Acquisition Procedures?**

No, market Research varies with urgency, complexity, and estimated cost of the procurement. as well as the past experience of the contract officer.

### **Can I use Market Research to evaluate offers?**

If, as a result of market research, the contracting officer determines existing product literature is adequate for evaluation purposes, it should be used in lieu of technical proposals. This saves proposal costs and allows offerors to propose multiple products, allowing contracting officers to consider the entire product line. As mentioned above, the FAR encourages the submission of existing product literature. That same literature may be used, where possible, to evaluate items offered (12.602). Consumer Reports and other independent product reviews may be used for evaluation purposes. Be careful that if you do use product reviews, they must be independent. As always, utilization of such information must be fully documented.

Caution: Some product literature is advertising. Advertisements must not be considered in evaluating offers. Examples of advertising include celebrity endorsements and unsubstantiated opinions (-Tastes great!" Less filling!). Be very careful to distinguish factual product literature from advertising material, and to disregard the latter.

### **Can I evaluate past performance in commercial item buys?**

Yes! In fact past performances a required element for every evaluation/award for commercial items. FAC (Federal Acquisition

Circular) 90-26 and FAR 15.605, and 42.1503 establish thresholds for inclusion of past performance as an evaluation factor. Past performance data is available from sources both inside and outside the government.

**What type of contract can I use for commercial items?**

To conform with the requirements of FAR part 12, agencies shall use firm-fixed price contracts or fixed price contracts with economic price adjustment for the acquisition of commercial items and services. Indefinite-delivery contracts may be used when prices are established based on a firm-fixed price or a fixed price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited. (FAR 12.207) The key issue here is audit rights, which, under the commercial item clauses, the government does not have. Therefore, we cannot use contracts that would normally have had audit clauses in them.

**Can the government levy inspections on commercial item contracts?**

Contracts for commercial items shall rely on contractor's existing quality systems as a substitute for government inspection, testing, and acceptance, unless customary market practice permit in-process inspection. If the government uses in-process inspection it must be in accordance with commercial practice. (FAR 12.208,46.102,46.202-1)

**Where can I find price reasonableness help on commercial items?**

FAR subpart 15.8 contains the policies and procedures for establishing price reasonableness for commercial items.

### **Can a CO offer buyer financing for commercial items:**

FAR recognized that buyer financing is a customary market practice for some commercial items, and has re-written subpart 32.2 (Commercial item Purchase Financing). If market research confirms buyer financing is customary, the contracting officer may offer financing. Such financing must be consistent with customary market practices, policies, and procedures in part 32.

These can include:

- Advance payment which may not exceed more than 15 percent of the contract price.
- Interim payments which apply after work is done but prior to delivery. (e.g. when a contractor as assigned parts from inventory to the contract as started work.)

### **What kind of Tech data can we ask for?**

Except as provided by agency specific statutes, the government shall acquire only the technical data (and rights) customarily provided to the public. If tech data is required, include the appropriate provision and clauses in an addendum to the solicitation and contract. (FAR 12.211)

### **What about computer software?**

Commercial software documentation shall be acquired under licenses customarily provided to the public. Offerors are not required to:

- Furnish technical information related to commercial computer software or documentation that is customarily provided to the public
- Relinquish to the government rights to use, modify, reproduce, release, perform, display or
- Disclose commercial software or documentation except as mutually agreed.(FAR 12.212)

### **Can the government accept seller terms and conditions?**

It is customary for both the buyer and the seller to propose terms and conditions for a transaction. Terms and conditions in Part 12 are written from the government's perspective as a buyer in the commercial marketplace. These are generally appropriate for most buys. However, if other practices are appropriate to a particular buy they should be considered for use, if appropriate to conclude the deal and not otherwise prohibited by law. (FAR 12.213)

### **How is a commercial item contract assembled?**

Solicitations and contracts for the acquisition of commercial items shall, to the maximum extent practicable, be assembled as follows:

- Standard Form 1449
- Continuation of any necessary sections
- Contract Clauses: 52.212-4
- Any addendum to 52.212-4
- 52.212-5
- Any attachments (e.g. SOW, SPECS)
- Solicitation Provisions:
  - 52.212-1
  - Any addendum to 52.212-1
  - 52.212-2
  - 52.212-3

### **How do warranties fit in commercial item acquisition?**

The government's post-award rights include implied warranties of:

- Merchantability--Item is reasonably fit for ordinary purposes for which it is used, is of average grade, and comparable in quality to others in the market of that description.
- Fitness--item is fit for the particular purpose or which the government will use it.
- Remedies contained in the acceptance paragraph.

FASA also requires contracting officers to take advantage of commercial (express warranties, to the maximum extent practicable. Offeror should offer the government the same terms offered to the public. If we intend to use the express warranty, it must meet the needs of the government, must be adequate to protect our needs, and must be cost effective.

### **How do we terminate commercial item contracts?**

FAR 12-403 and Clause 52.212-4 addresses commercial contract terminations. The paragraphs in 52.212-4 of interest are (f) excusable delays, (l) termination for the government's convenience, and (m) termination for cause. The termination provisions in 52.212-4 are quite different from the standard clauses in Part 49, as they are patterned after those found in industry contracts. Excusable delays are much more lenient; it recognizes delays of a common carrier.

When terminating for the government's convenience, the contractor shall be paid a percentage of contract price based on percentage of work done and any direct charges resulting from the termination. This is a very commercial application. There is not government unique record keeping (CAS or cost principles).

When termination for cause (Part 49 term is default) the reasons for termination and the remedies available are very broad and are the same as those available to any commercial buyer.

### **Do we still have the same inspection requirements and rights?**

Unlike the traditional inspection and acceptance clauses, 52.212-4 does not make acceptance final for patent defects. This is in

keeping with customary commercial practice, i.e. accepting items based on seller assurances rather than inspection of the items. (FAR 52.212-4)

**What provisions or laws are now inapplicable to commercial contracts?**

FAR subpart 12.5 list provision of laws that are fully or partially inapplicable to commercial item contracts. this does not mean the provisions of the statute do not apply. For example, while contractors are relieved of the requirement to submit certifications, they are still required to comply with the laws such as the Clean Air Act, the Federal Water Pollution control Act, and the Contract Work Hours and Safety Standards Act.

**What process improvements make commercial items faster?**

FAR subpart 12.6 covers new procedures to simplify and speed up the procurement process. To reduce solicitation time, the contracting officer may use a streamlined procedure which combines the required CBD synopsis and the issuance of the solicitation into one document.

There is also a streamlined evaluation procedure. When evaluation factors are used, the contracting officer may use a provision similar to that in 52.212-2. For example, when award based on best value is contemplated, the provision should be tailored to describe the evaluation factors and give their relative importance. Suggested criteria are technical, price and past performance, the latter being stressed. Keep the factors simple and to a minimum. Subfactors are not necessary if the solicitation adequately describes the item's use. Offers shall be evaluated in accordance with criteria contained in the solicitation.

Streamlined Best Value Evaluation: 12.602 outlines a streamlined best value approach to evaluate offers for commercial items. It is a much simplified source selection procedure which allows considerable discretion in selecting the

successful offeror. It may be appropriate for a wide range of commercial products. The procedure itself is streamlined, but the key to successful use will be full documentation of the award decision, including discussion of trade-offs considered and made.

### **Where do I begin?**

1. Perform the necessary market research. No questions, no debate, it has to be done. If you don't have a sound basis to determine what is and what is not customary commercial practice for this acquisition, you are asking for trouble. Do the research, and fully document its conduct and the results.

2. FAR Part 12.303 shows a suggested outline for your solicitation. Now you will have to adapt that outline to your particular acquisition.

3. Customary Business Practices This is where your understanding of the commercial marketplace (the results of your market research) comes into play. It is absolutely critical that you be able to establish what is - and what is not - customary commercial practice for acquisitions similar to yours. You have broad latitude to tailor 52.212-1, 52.212-2, and most portions of 52.212-4 to conform to customary commercial practice (52.212-3 and 52.212-5 are off-limits, you need a FAR deviation to revise anything in those provisions.) Tailoring that is inconsistent with customary commercial practice requires formal waiver approval in accordance with agency procedures [12.302(c)].

4. Tailor Prior Solicitation With the outline and your understanding of the commercial marketplace, go through your last solicitation to get an idea of what in the outline fits, what needs to be revised, and what has to be added. Tailor 52.212-1 to be appropriate for your specific requirement. 52.212-2 establishes a simplified best-value evaluation of offers. Use that, tailor it, or discard it completely and use another more appropriate evaluation scheme. Pay particular attention to the

terms and conditions in 52.212-4. They are intentionally plain-vanilla generic. Tailor them [but do not tailor Assignments, Disputes, Payment, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts; 12.302(b)] to fit your requirement.

5. Concise Contract Documents Suggestion: Where customary commercial practice indicates that a particular matter should be the subject of a provision or clause, compare existing FAR and/or AFFAR provisions and clauses to ascertain differences between those and the commercial practices. Don't pile up your contract with unnecessary provisions and clauses, but don't be afraid to use ones that you deem appropriate for your acquisition.

If you do tailor one of the Part 12 provisions, mark it "Tailored." Same goes for any other clauses that you've revised and included in your solicitation/contract.

### **What Does "Customary Commercial Practice" Mean?**

There's no way to put a number or percentage on this, or establish any sort of easy yardstick for measurement. It will be a discretionary decision of the contracting officer, made within the context of each individual situation. Adequate market research and full understanding of the commercial marketplace associated with a particular acquisition will form the bases for determining what is and what is not customary commercial practice.

A couple of examples may shed some light on this matter. Contract financing may be a customary commercial practice for bulk fuel oil contracts but not for furniture contracts. Or, contract financing might be customary commercial practice for significant ADP acquisitions but not for relatively smaller ones. Again, for emphasis, customary commercial practice is determined by the contracting officer



within the context of the marketplace for each individual procurement requirement.

(NOTE: It may be that some elements of customary commercial practice could be established for specific commodities. That could be an area for future consideration.)

### **What About The Uniform Contract Format?**

It's gone for commercial items. It doesn't work with the Form 1449. You can't use it. Contracts under Part 12 will be significantly shorter, so offerors and contractors can reasonably be expected to read the whole thing.

### **But What About Standardization? –**

Market research to determine customary commercial practices should result in a GSA contract for hand tools that is similar to a DLA contract for hand tools, a NASA contract for hand tools, and a Ford Motor Company contract for hand tools, etc. Those government agency contracts won't be identical by any means, but they should be somewhat similar. But, having said that, there may well be significant differences in those agency contracts. In allowing for increased flexibility, the new FAR changes move distinctly away from standardization.

### ***SUCCESS Stories***

An Air Force Base recently used electronic data interchange methods to conduct market research on and solicit a family housing project. By issuing electronic synopsis and using feedback from the test synopsis they were able to tailor their solicitation to take advantage of the commercial market's strengths, as well as avoid protests and create a partnering atmosphere with industry.

The navy recently had two successes stories garnering great attention. The Multi-Sensor Torpedo Recognition and Alert Processor (MSTRAP) was a success in both cost savings and

development time by using Commercial Off the Shelf (COTS) hardware and software, reducing documentation requirements, using opens systems practices and standards. These advantages of commercial items brought costs from over \$1 million to just over \$300,000 and reduced development time by 50%. Market Research showed the capability existed and allowed the Contracting Officer to exploit it. Additionally, the AN/ARC-21 Radio modernization had similar success. The new version took advantage of commercial components, (e.g. plastic parts) Similarly, they streamlined requirements from 78 MILSPECS to 35, and reduced clauses in the prime and subcontracts. They also reduced the number of Contract Data Requirements Listings (CDRLs) from 56 to 20 and allowed for commercial type reporting. And finally, commercial depot level maintenance was used in place of organic.

## **APPENDIX 1 - AIR FORCE AND MAJCOM MARKET RESEARCH POINTS OF CONTACT , COURSES & INTERNET SITES**

### **SAF/AQC**

#### **Market Research:**

##### **Telephone Numbers:**

**DSN:** 225-9041

**Commercial:** 703 695-9041

**E-mail:** boockhok@af.pentagon.mil

**Point of Contact** Ms Kathy Boockholdt

### **AIR COMBAT COMMAND**

**Market Research POC:** HQ ACC/LGC

##### **Telephone Numbers:**

**DSN:** 574-5373

**Commercial:** 804-764-5373

**E-Mail:** saleckl@hqacclog.af.mil

**POC** Capt Leslee Saleck

### **Air Force Civil Engineering Support Agency (HQ AFCESA/CESE)**

#### **ESPC Contracts**

**DSN:** 523-6361

**POC** Mr Fred Beason,

**E-Mail** fbeason@afcesa.af.mil

#### **Demand Side Management**

**DSN** 523-6295

**POC** Mr James Snook

**E-Mail:** snookj@afcesa.af.mil

### **AIR EDUCATION AND TRAINING COMMAND**

#### **CONTRACTING:**

**Market Research:** HQ AETC/LGC

##### **Telephone Numbers:**

**DSN** 487-3181

**Commercial**

**E-Mail:** ckendric@lgc.aetc.af.mil

**POC** Charles Kendric

## **AIR FORCE MATERIEL COMMAND**

**Market Research:**

**Market Research:** AFMC/PKO

**Telephone Numbers:** DSN: 986-0313

**Commercial:** 513257

**E-Mail:** Jamesde@WPGATE1.WPAFB.AF.MIL

**POC** Capt James

## **AIR MOBILITY COMMAND**

## **AIR FORCE SPACE COMMAND**

**Market Research:** HQ USSPC/LGC

**Telephone Numbers:**

**DSN:** 692-5305

**Commercial:** 719-554-5305

**E-Mail:** mdodds@spacecom.af.mil

**POC** Lt Col Larry Lawrence

## **AFCQMI**

**Market Research/Outsourcing Issues:**

**Telephone Numbers:**

**DSN** 487-5332

**Commercial:** 210-~~652~~ 5332

**E-Mail:**

**AFMEA Home Page:** <http://www.afmea.af.mil>

**Mailing address:** AFMEA/PLDC

**POC** Mr Manuel Salazar

## **AIR FORCE SPECIAL OPERATIONS COMMAND**

**Market Research**

**Telephone Numbers:**

**DSN** 579-5241

**Commercial:** 904-884-5241

**Mailing address:** HQ AFSOC

**POC** SMSgt Gary Thomas

**E-Mail:** thomasg@hqafsoc.hurlburt.af.mil

## **PACIFIC AIR FORCES**

### **Market Research**

**Telephone Numbers:** DSN 449-5516 ext 304  
**Commercial:**  
**POC** Marge Roberts  
**E-Mail:** robertsm@hqpacaf.af.mil

## **US AIR FORCES IN EUROPE**

### **MANPOWER--Command Commercial Activities Program Manager**

**Telephone Numbers:**  
**DSN** 480-6536  
**Commercial:** 01-149-6371-47-7259  
**Mailing address:** HQ USAFE/LGCK  
**POC** Ms. Patricia Bell  
**E-Mail:** patricia.bell@ramstein.af.mil

## **Courses Related to Market Research:**

### **Federal Acquisition Institute Courses**

Federal Acquisition Institute Course #218 Procurement Planning

This course includes an exercise driven learning module on market research.

Federal Acquisition Institute Course, Commercial Items Acquisitions Seminar

This two-day course covers market research, documenting market research results and techniques for planning an acquisition and structuring a solicitation based on market research results.

### **Defense Acquisition University Courses**

PQM 202

Commercial and Nondevelopmental Item Acquisition

Commercial and Nondevelopmental Item (NDI) Acquisition focuses on tools and techniques for identifying and evaluating commercial and NDI alternatives throughout the acquisition process. The course provides instruction on requirements definition, acquisition strategy development, acquisition, and support planning. It also introduces tools and techniques for selecting and preparing the appropriate technical requirements documents, commercial item descriptions, using multiple award schedules, and using market acceptability criteria, and lessons learned in commercial and NDI acquisition. Instructional methods used include videotapes, lecture, class discussion, and case studies of actual acquisitions. This is an assignment-specific course.

Prerequisites: None.

Length: 2 Class Days

PQM 203

Market Research and Commercial Item Descriptions

Market Research and Commercial Item Descriptions presents instruction on the preparation and review of commercial item descriptions, including market research techniques to identify and characterize commercial items, the development and use of market acceptability criteria, and the development of performance-based salient characteristics. The course also provides current DoD policy on the use of commercial items, market research, and performance-based specifications. This is an assignment-specific course. See Appendix H.

Prerequisites: None.

Length: 1 Class Day

### **Discretionary References**

DoD Standardization Document 5, Market Analysis for Nondevelopmental Items.

As the title suggests, this handbook predates the Federal Acquisition Streamlining Act of 1994 (FASA). However, it contains useful information on conducting market research. Copies are

available from the DoD Single Stock Point, Standardization Document Order Desk, 700 Robbins Avenue, Building 4D, Philadelphia, PA 19111-5094, (215) 697-2667 or 2179.

DoD Standardization Document 2, Buying Commercial & Nondevelopmental Items: A Handbook.

Chapter 2 of this handbook includes useful information on market research. Copies are available from the DoD Single Stock Point, Standardization Document Order Desk, 700 Robbins Avenue, Building 4D, Philadelphia, PA 19111-5094, (215) 697-2667 or 2179. Electronic copies are available at <http://www.acq.osd.mil/ar/cadv.htm> or <http://www.acq.osd.mil/es/std/ndi>

## ***Internet Resources***

### ***Search Engines***

Yahoo	<a href="http://www.yahoo.com">http://www.yahoo.com</a>
Lycos	<a href="http://www.lycos.com">http://www.lycos.com</a>
WebCrawler	<a href="http://www.webcrawler.com">http://www.webcrawler.com</a>

### ***Websites***

**DoD Market Research Page:** [http://www.lmi.org/comm\\_adv/marktool.htm](http://www.lmi.org/comm_adv/marktool.htm)

This site is currently under construction. The site includes links to the DoD Deskbook, Lessons learned, Best Practices, BuyersTerms, Toolbox, News.

**Federal Information Exchange:** [http://www.fie.com/www.us\\_gov.htm](http://www.fie.com/www.us_gov.htm)

**Acquisition Reform Net:** <http://www-far.npr.gov>

Select the "Acquisition Opportunities" icon to find agency acquisition information. Information includes future acquisitions, descriptions of general performance requirements items to be acquired, transfer of requested product data from interested firms.

**Department of Commerce:** <http://www.stat-usa.gov>

Searchable Department of Commerce Databases

**Federal Supply Schedule:** <http://www.fss.gsa.gov>

The GSA Federal Supply Service provides billions worth of goods and services to U.S. Government entities throughout the world.

**DoD Acquisition Web:** <http://www.acq.osd.mil/acqweb>

**SAF/AQC HomePage:** <http://www.safaq.hq.af.mil/contracting>

Includes Biz Opty Page, People-Assignments, APDP, Reserve-IMA InfoLibrary-FAR/DFARS/AFFARS, Policy, Guides, AFIs, Mgmt Info-Lessons Learned, GAO, Newsletter, Acquisition Reform-Acceleration Day Feedback, Points Of Contacts, Electronic Catalog Shopping, What's New and Training Information

**Defense Acquisition University:** [www.acq.osd.mil/dau/dau.html](http://www.acq.osd.mil/dau/dau.html)



Get the list of DAU courses with associated course descriptions and schedules, download the entire DAU Schedule or find the most economical class for your situation.

**U.S. Congress, including legislation:** <http://thomas.loc.gov>

**General Services Administration:** <http://gsa.gov>

Administrator of GSA, News Releases, What's New, Top Ten, Consumer Information Center

GSA Shopping Advantage, Regional Offices, Fleet Management & Federal Travel, Federal Information Real and Personal Property, Government-Wide Policy, Business and Finance, GSA Publications About GSA, Education and Training, Site Search, Security

**Federal Acquisition Institute** - <http://www.gsa.gov/staff/v/training.htm>

The Office's Federal Acquisition Institute fosters and promotes Governmentwide career management and training programs to develop a professional workforce and coordinates Governmentwide studies to improve the procurement process.

**Federal Acquisition Regulation:** <http://www.gsa.gov/far>

**Small Business Administration:** <http://www.sbaonline.sba.gov/>

**Thomas Register:** <http://www.thomasregister.com>

Information on nearly 52,000 industrial products and services, specifications and availability information from thousands of manufacturers. In all, more than 1,500,000 individual product/service sources are included. Thomas Register also contains a complete 2-volume Company Profiles section and a comprehensive 8-volume Catalog File section. Headquarters and branch addresses, phone numbers and asset ratings are provided on more than 148,000 U.S. firms.

**The National Association of Purchasing Management**

<http://catalog.com/napmsv/pcat.htm>

On-line database of seller information sorted by purchasing categories. A valuable tool for preliminary market research.

**CommerceNet :** [http:// www.commerce.net](http://www.commerce.net)

A not-for-profit corporation that is conducting the first large-scale market trial of technologies and business processes to support electronic commerce via the Internet. Click here to see CommerceNet's member list.

**PowerPort:** <http://www.powerport.com/>

An information brokerage service. You submit research questions or consulting problems to this network of information service providers. In return, you will receive a detailed proposal covering a range of research/consulting plans, turnaround times, fixed price quotes, and background qualifications from the Providers interested in your project. There is no charge for submitting a request, no charge for proposals, no obligation to buy and satisfaction is guaranteed.

**Industry Net:** [http:// www.industry.net/](http://www.industry.net/)

Offers its "buying members" (primarily purchasing and requirements professionals) free access to a wide variety of information they need to make their day-to-day buying decisions. It offers its "selling clients" (primarily manufacturers, distributors, and service providers) the opportunity to market their products to these buying members.

Electronic Industries Association : <http://www.eia.org/>

Represents over 12,500 U.S. electronics manufacturers. Information concerning many of these firms can be accessed through the EIA homepage.

**Dunn & Bradstreet :** <http://www.dbisna.com/>

A catalog of Dunn & Bradstreet's tools to identify and assist in evaluating potential suppliers based on purchasing needs; demographics such as size, geography, woman or minority owned business; ISO 9000 registration; past performance information; non-delivery or insolvency information. D&B offers reports, publications, supplier base analysis and software.

**Biz Web:** [http:// www.bizweb.com](http://www.bizweb.com)

BizWeb's motto is "We scour the Internet for company and product information so you won't have to." Thousands of companies are categorized and listed by the goods or services they provide.

**Yellow Pages:** <http://www.yellow.com/>

World Wide Yellow Pages - Search for businesses by that provide a type of service; search listings by business name or by location of the business.

**SBA Procurement Automated Source System (PASS) :** <http://www.sbaonline.sba.gov/>

A data base full of thousands of small companies (more than 200,000) that are interested in doing business with various agencies of the Federal Government or with their large prime contractors. PASS was developed to assist small businesses in their efforts to obtain a fair share of Federal procurement opportunities. Use for sources.

**Starting Point Business :** <http://www.stpt.com/busine.html>

This site has commercial directories, commercial resources, marketing resources links.

**Department of Defense Eagle Eye database**

Lists annual contract awards which can be used to identify contractors currently delivering the same or similar items to either the requesting agency or other agencies. These list permit searches utilizing the Standard Industrial Classification (SIC) codes of the items to be procured. They also identify cognizant purchasing activities enabling further direct contact for information.

## **Attachment 1 Sample of Market Report**

### **MARKET REPORT**

#### **Security Requirements for The Desert Storm Museum**

##### **I. Background**

The Desert Shield/Desert Storm commemorates the men and women who served in the Persian Gulf on behalf of our country during Operation Desert Shield/Storm. The museum houses many artifacts of the war and gifts of appreciation from the Saudi Arabia and Kuwait governments.

Upgraded security measures are required for the museum.

##### **II. System Requirements**

- Five rooms within the museum, each 25' x 25', permanently house the museum's displays. Each room requires 24-hours-day/7 day-a-week video surveillance. An archived record of surveillance must be maintained with 30 days' data. The video system must be light-compensated for normal extremes of indoor lighting. The control and monitoring room is 8' x 10'.

- A walk-through personnel metal detection system will be installed at the main entrance to the Museum. The system must contain indicators for power and alarm; a minimum 12-digit keypad, hermetically sealed to resist dust and moisture; DB15 Connector to be provided within computer console; Form C relay contacts and power supply voltages for auxiliary external alarm interfacing; RS-232 C data output port required; switchable power supply between 110 and 220 volts + 10% 50/60 HZ, 1.2 amps maximum draw required; humidity tolerance to 95% non-condensing required; throughput rate to be at least 50-60 detection's per minute minimum; operating temperature is 10\_ C to +55\_ C; fault indicators shall consistently monitor each electronic system and announce any major failure; uniformity of the multi-field antenna must be equal in any position; sensor detection shall be bi-directional; and noise rejection to eliminate all radio frequency interference from portable 2-way, mobile, and base radios. Archway structure shall be gray Formica Plastic Laminate.

- Optional features for the walk-through personnel metal detection include one remote command center with 25' standard cable, one remote Annunciator Panel with 25' standard cable and one weatherized archway portal.

- An uninterruptable power supply or other electrical backup system will be required to support the video and metal detection systems at full capacity for at least two hours.

- The selected contractor will be required to provide system design consulting, system installation and test, and training for operations personnel. The contractor will provide all necessary labor, equipment, tools, materials, and transportation to support design, installation, testing, and training.

- Both equipment and system warranty will be required.

- Extended warranty and training options will be required. Extended warranties should include 100% coverage of the installed system, 24-hour technical and emergency assistance (including weekends and holidays), 48-hour replacement parts (on most system components), 4 hours of training yearly on the installed system (excluding training at the time of installation), and 3-yearly preventive maintenance checks (cleaning and tuning every 4-months), and one camera.

### **III. Schedule**

Installation needed not later than September 30 1996.

### **IV. Potential Suppliers**

No sources were provided on the purchase request by the requiring activity. To ensure that market research efforts would provide comprehensive acquisition management information, our search focused on identifying commercial sources: (a) recognized as providers of the above requirements; (b) currently under contract with DoD to provide security systems services; and (c) those DoD services/agencies with open/active security systems services contracts.

1. The Thomas Register (world wide web edition) was utilized to identify commercial sources of Security Systems and Surveillance Systems. Initial research queries resulted in identifying over 20,000 commercial suppliers. Search qualifiers were more narrowly defined and efforts resulted in identifying 111 commercial providers. A capabilities/produce review downsided this selection to 19 firms (Attachment A).

2. The Eagle Eye FY95 Prime Contract Award database (based on DD350 information) was searched utilizing SIC Code 7382, Security Systems Services. Search efforts resulted in identifying 31 prime contractors who currently are under contract with DoD to provide security systems services (Attachment B).

3. To identify DoD services/agencies with open/active security systems service contracts (FSC63), we again searched the Eagle Eye database. This search resulted in identifying four (4) purchasing activities (Attachment C).

The above search efforts provided sufficient information to conduct this market survey. Other references, such as contacting GSA's contract representative to gather market information on Schedule No. 63 I, Alarm and Signal Systems; SBA's U.S. Government Purchasing & Sales Directory; SBA's Procurement Automated Source System (PASS) database; the Department of Commerce ABELS minority contractor database; DoD's 4205.13 Report (DoD Subcontracting Opportunities with DoD Major Prime Contractors); and many other commercial or electronic sources were available, but not utilized.

### **V. Distinguishing Characteristics**

All system components - the video cameras, monitor(s), recorder, control unit, and personnel metal detector - are commercial items. Many variations and small product differentiators exist among the potential offerors' equipment.

### **VI. Market Analysis**

After discussing industry approaches to similar systems, including other museum applications and federal buildings, several refinements to system requirements and to the contracting strategy became apparent:

1. While the total system could be done by any of the providers, there are really two systems which could be differentiated. The video surveillance system and the personnel metal detection system are not integrated and could be contracted separately without difficulty.

2. The consulting, purchasing, installing, and training can best be done by a single contractor - a turnkey contract. Mixing contractors in a system as small as this is very inefficient and is likely to produce breaks in continuity of service, training and warranty.
3. One-year warranties for all equipment and the installed system are industry standard and should be specified as the minimum.
4. All firms lease and sell. Lease agreements require a security deposit equal to one or two months' lease payments and can be applied to the purchase price at lease end, or is returned at the end of the lease period. Lease agreements may not be canceled, but the equipment may be upgraded prior to expiration of the initial term. Various lease arrangements are available such as Seasonal Lease Plans, Step-Payment Plans and 90-Day Deferred Plans.
5. It is not practical to look for suppliers who do not have a local presence. Non-local suppliers would have noncompetitive installation costs and would be able to provide no direct service. They may try to use local contractors, but quality problems are more likely under such a scenario.
6. Training is normal, but not a universal component of system installations. It should be specified.
7. High value museum items are not sufficiently protected by video surveillance alone. Consideration should be made for the integration of other security systems such as motion or contact sensors.
8. High value museum items, combined with certain types of buildings or building locations may suggest perimeter alarm systems. Capability to integrate these systems should be included.
9. Maintenance contracts are normal for post-warranty periods and the option should be specified. A depot-repair, or component mail-in, option is less expensive than an onsite repair option.
10. The time to do the installation could vary from one to three months depending on architectural issues.

## **VII. Customary Commercial Terms and Conditions**

1. Commercial Item Purchase Payment Terms. Two types of payment terms are standard within the industry. The first is a Net 30 arrangement with payment due after system installation and turnover. The second type involves a 25% deposit at time of order, 50% upon delivery, and 25% at completion of installation and turnover.
2. Freight. FOB shipping point or FOB destination - as specified in contract.
3. Delivery
  - Time. Most systems can be delivered within 45 days.
  - Place. Buyer's stipulated destination or seller's location.
  - Quantity. Single units/lots or several lots.

4. Acceptance of Offer/Quote: Proposal is voidable, by the seller, unless accepted and delivered to them within thirty (30) days from the date of quote. Disclosure states that the proposal is not for publication and is issued expressly on the condition that it is not to be copied, reprinted or reproduced in any manner; nor is it to be disclosed to any third party, either wholly or in part, without the express written consent of the seller.

5. Performance: All material is guaranteed to be as specified. All work will be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the original quoted value. All workers are fully covered by Workmen's Compensation Insurance.

6. Acceptance/Rejection of Goods.

- Seller responsibility. Deliver all equipment to job site; supply all necessary low voltage cables for proper system operation; run all cables as required; mount all equipment; perform all final adjustments and systems test; train assigned personnel in proper system operation; provide all necessary drawings and documentation.

- Buyer's responsibility. Buyer to designate one responsible individual as the point of contact; buyer to inspect goods upon delivery to ensure conformity to contract requirements prior to issuing payment. If the goods upon delivery fail in any respect to conform to the contract, the buyer may (a) reject the goods at that time or (b) opt to accept the delivery of goods in spite of the non-conformity. Partial acceptance may be accomplished.

7. Warranty. Security systems come with a one-year full coverage warranty (all components). Warranty becomes effective either after the date of installation/ delivery or the effective date of the Warranty Agreement. Warranty may be extended up to five years and will cover the entire system. The warranty will not cover any damage to the system or its components that is caused by one or more of the following: misuse, abuse, vandalism, fire, Act of God, unprotected power surges, service by unauthorized persons or other damage not related to the installation, manufacturing or operation of the installed or purchased equipment.

The list below highlights the details of the warranty. The cost for one year of extended warranties based on 10% of the systems purchase price.

- 100% of the installed system is covered;
- 24-hour technical and emergency assistance (including weekends and holidays);
- 48-hour replacement parts (on most system components);
- 4-hours of training yearly on the installed system (excluding training at the time of installation);
- 3-yearly preventive maintenance checks (cleaning and tuning every 4-months); and
- One camera relocation (with existing equipment).

## **VIII. Market Price**

A fair market price is easily determined in this competitive market. The cost of equipment is not likely to be a large discriminator. The installation estimates and the comprehensive system costs including training and warranty are the likely discriminators. All telephone respondents believed that \$150,000 to be very much above the market price for such a turnkey system.

The walk-through personnel metal detection system ranges in price from \$3,495.00 to \$6,345.00 depending on whether the system provides single-pulse or dual-pulse technology, variable levels of programming to customize volume and sensitivity settings and for changing the metal discrimination programs, audible alarm tones, and various optional features.

## **IX. Trends in Supply and Demand**

Security systems is highly competitive and growing market with many hundreds of competent firms. It is also a technology-driven market with increasing capabilities and decreasing costs, reflecting the underlying technologies of computational power applied to small control systems. Demand in this market is increasing and so is the supply. However, because of the local nature of service, there is less consolidation than one might expect for such a ubiquitous industry. There are some exceptions, such as Wells Fargo and Seimens, among others.

## **X. Concerns About Quality**

Individual components in both systems are highly reliable. However, overall systems do require periodic preventive and corrective maintenance because of the nature of hardware and electronic equipment. Most quality defects will likely come as a result of deficiencies in planning or installing the installation. An experienced turnkey contractor is most likely to build a trouble-free system. A turnkey contractor also has more at stake in the system than if the project was severable.

## **XI. Acquisition History**

The prices paid previously by the Government for security-type systems ranged from \$43,000 to \$270,000. An inquiry has been generated and a response is anticipated within fifteen days. An update to this market report will be generated at that time.

## **Attachments**

Attachment A Thomas Register

Attachment B Eagle Eye FY95 Prime Contract Awards - SIC Code 7382 (Security Systems Services)

Attachment C Government Purchasing Offices for FSC63 (Security Systems)



## Attachment A: THOMAS REGISTER SEARCH RESULTS

### **I. X-Ray Security Systems**

Company Name   Company Address  
EG&G, Inc. (Corporate)   Wheeling, IL  
Control Screening LP   Northvale, NJ 07647-2219  
Heimann Systems Div   Iselin, NJ  
Siemens Components, Inc.  
Torfino Enterprises, Inc.   West Palm Beach, FL  
Siemens Corporation   Iselin, NJ  
Federal Labs Systems/ Scan-Tech.   Sec Northvale, NJ  
Caerocom International, Inc.   Laval, PQ  
C.E.I Group   Canada

### **II. Surveillance Cameras**

Company Name   Company Address  
Phase I Technology Corp   Deer Park, NY  
Toshiba CCTV Group Video   Buffaco Grove, IL  
Communication & Information  
Systems, A Division of Toshiba  
America Consumer Products  
Loronix Information Systems   Durango, CO  
Diamond Electronics, Inc.   Lancaster, OH  
Surveillance Systems, Inc.   Linfield, PA  
Control Security & Surveillance, Inc.   Austin, TX  
Wells Fargo Alarm Services   King of Prussia, PA  
Controlled Access, Inc.   Moorestown, NJ  
Integrated Access Systems   Glastonbury, CT  
of New England, Inc.  
Integrated Access Systems, Inc.   Bensalem, PA  
Detection Systems Sc Engineering Co.   Troy, MI  
Integrated Access Systems, Inc.   Whippany, NJ

Attachment B: EAGLE EYE FY95 PRIME  
CONTRACT A WARDS  
for SIC Code 7382, Security Systems Services

**I. Security Systems Services**

Company Size	Company Name	Company Address
Large	Kastle Systems, Inc.	1501 Wilson Blvd.   Arlington, VA 22209-2403
Large	Honeywell, Inc.	8975 Three Chapt Road Richmond, VA 23229-4656
Small	Integrated Systems, Inc.	2300 W. Park Place Blvd. Stone Mountain, GA 30087-3561
Small	International Research Assoc.	8030 Cessna Avenue Gaithersburg, MD 20879-4119
Small	Dynalec Corp	87 W. Main Street Sodus, NY 14551-1137
Large	Nation, Inc.	788 Shrewsbury Avenue Eatontown, NJ 07724-3080
Large	MFS Network Technologies, Inc	1200 Landmark Center, Ste 1300] Omaha, NE 68102
Large	Wells Fargo Alarm Svcs	1010 N. Glebe Road, Ste 680 Arlington, VA 22201-5706
Large	Prudential Security Svcs	1000 Apollo Court #J Antioch, CA 94509-7514
Large	Safemasters Company, Inc.	5655 General Washington Drive Alexandria, VA 22312-2452
SDB	C.A.E. & Associates, Inc.	11400 Airport Road, Ste B Everett, WA 98204-3745
Large	The Foxboro Company	600 N. Bedford Street East Bridgewater, MA 02333-1199
WOB	Executive Security & EngrTech	900 2nd Street, NE, Suite 112 Washington, D.C. 20002-3557

**II. Maintenance/Repair of Security Systems Services**

Company Size	Company Name	Company Address
Small	Secur-DataSystemsInc.	7340 Executive Way Frederick, MD 21701-9405
Small	Central Security & Electric	104 E. 11th Street Rolla, MO 65401-2866
Small	ALSS, Inc.	3093 E. Main Road Portsmouth, RI 02871-4126
Small	National Guardian Sec Svcs	550 Barneveld Avenue San Francisco, CA 94124- 1878
Small	PSC, Inc.	20271 Goldenrod Lane Germantown, MD 20876-4064

### **III. Facilities Operations /Visitor Control /Guard Services/Surveillance Services**

Company Size	Company Name	Company Address
Small	XERAD, Inc.	767 Paseo Miramar Pacific Ralisa, CA 90272-3026
Small	North American Video & Sound Company	2222 N. Memorial Pkwy, Ste G Huntsville, AL 35810-4515
Small	SecurityEast, Inc.	792 Hartford Tpke Shrewsbury, MA 01545-4107
SDB	Integrity Ind Sec Svcs	211 S. 6th Street Clarksville, TN 37040-3607
SDB	WMP Security Svc Co.	San Diego, CA
Small	Custom House	4500 3rd Avenue, SE Lacey, WA 98503-1053
	Instructor Guide	

### **IV. Installation of Alarm/Signal Systems**

Company Size	Company Name	Company Address
Small	Advantor Corp	6101 Lake Ellenor Drive Orland, FA 32809-4660
Small	Digital Applications, Inc.	2101 Executive Drive Hampton, VA 23666-2404
Small	Controlled Access Concepts	3959 Pender Drive, Ste 109 Fairfax, VA 22030-6041
SDB	Omnisec Corp	7926 Jones Branch Drive McLean, VA 22102-3323

### **V. Lease/Rental of Alarm and Signal Systems**

Company Size	Company Name	Company Address
Large	ADT Security Systems	7399 Boston Blvd. Mid-South Springfield, VA 22153
Small	Sentrex, Inc.	3823 Highcliff Drive San Antonio, TX 78218-2423

Attachment C: Government Purchasing Offices for  
FSC63 (Security Systems)

FSC #	Purchasing Organization Name	Purchasing Organization Address
6350	Defense Logistics Agency	Defense Supply Center Richmond ATTN: DGSC-P Richmond, VA 23297-5000
6350	Department of the Navy	Space & Naval Warfare Systems Command (SPAWAR) 2511 Jefferson Davis Highway Arlington, VA 22202-9999
6350	Department of the Navy	Naval Supply Center Puget Sound Bremerton WA (NSC Puget) Bremerton, WA 98314-5100
6350	Department of the Navy	Naval Surface Warfare Center Maryland 20903-5000
		White Oak,

## **Attachment 2 Commercial Item Provisions and Clauses in Full Text**

### **52.212-1 Instructions to Offerors--Commercial Items.**

As prescribed in 12.301(b)(1), insert the following provision:

#### **INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS (OCT 1995)**

(a) Standard industrial classification (SIC) code and small business size standard. The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show--

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail

to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late offers. Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(1) Availability of requirements documents cited in the solicitation. (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407 ((202) 755-0325/0326).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 (telephone (215) 697-2569).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization Documents Order Desk or the Special Assistance Desk (telephone (610) 607-2667/2179).

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.

(End of provision)

## **52.212-2 Evaluation--Commercial Items**

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

### **EVALUATION--COMMERCIAL ITEMS**

(OCT 1995)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

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[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.605) and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

Technical and past performance, when combined, are \_\_\_\_\_ [Contracting Officer state, in accordance with FAR 15.605, the relative importance of all other evaluation factors, when combined, when compared to price.]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

## **52.212-3 Offeror Representations and Certifications**

### **Commercial Item**

As prescribed in 12.301(b)(2), insert the following provision:

#### **OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (JUN 1996)**

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

"Small disadvantaged business concern" means a small business concern that--

(1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and

(2) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR Part 124.

"Women-owned small business concern" means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.



(b) Taxpayer identification number (TIN) (26 U.S.C. 6050M). (1) Taxpayer Identification Number (TIN).

\* TIN:\_\_\_\_\_.

\* TIN has been applied for.

\* TIN is not required because:

\* Offeror is a nonresident alien, foreign corpora-

tion, or foreign partnership that does not have income

effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

\* Offeror is an agency or instrumentality of a foreign government;

\* Offeror is an agency or instrumentality of a Federal, state, or local government;

\* Other. State basis.\_\_\_\_\_

(2) Corporate Status.

\* Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

\* Other corporate entity;

\* Not a corporate entity:

\* Sole proprietorship

\* Partnership

\* Hospital or extended care facility described in

26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) Common Parent.

\* Offeror is not owned or controlled by a common parent:

\* Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it \* is, \* is not a small business concern.

(2) Small disadvantaged business concern. The offeror represents and certifies that it \* is, \* is not a small disadvantaged business concern.

(3) Women-owned small business concern. The offeror represents that it \* is, \* is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) Women-owned business concern. The offeror represents that it \* is, \* is not, a women-owned business concern.

(5) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

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(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation.]

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it \* is, \* is not an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents and certifies as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Average Annual

Number of EmployeesGross Revenues

\_\_\_ 50 or fewer\_\_\_ \$1 million or less

\_\_\_ 51 - 100\_\_\_ \$1,000,001 - \$2 million

\_\_\_ 101 - 250\_\_\_ \$2,000,001 - \$3.5 million

\_\_\_ 251 - 500\_\_\_ \$3,500,001 - \$5 million

\_\_\_ 501 - 750\_\_\_ \$5,000,001 - \$10 million

\_\_\_ 751 - 1,000\_\_\_ \$10,000,001 - \$17 million

\_\_\_ Over 1,000\_\_\_ Over \$17 million

(d) Certifications and representations required to implement provisions of Executive Order 11246--

(1) Certification of non-segregated facilities. (Applies only if the contract amount is expected to exceed \$10,000)--

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) Previous Contracts and Compliance. The offeror represents that--

(i) It \* has, \* has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It \* has, \* has not, filed all required compliance reports.

(3) Affirmative Action Compliance. The offeror <BR>

represents that--

(i) It \* has developed and has on file, \* has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It \* has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act--Trade Agreements--Balance of Payments Program Certificate. (Applies only if FAR clause 52.225-9, Buy American Act - Trade Agreement - Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act - Trade Agreements--Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

LINE ITEM NO. COUNTRY OF ORIGIN

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(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin

country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act - Trade Agreements - Balance of Payments Program:"

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(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act - Trade Agreements - Balance of Payments Program":

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(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g)(1) Buy American Act - North American Free Trade Agreement Implementation Act--Balance of Payments Program. (Applies only if FAR clause 52.225-21, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program, is included in this solicitation.)

(i) Each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program." Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(ii) Excluded End Products:

LINE ITEM NO.COUNTRY OF ORIGIN

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(List as necessary )

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each

excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify below those excluded end products that are NAFTA country end products. Products that are not identified below will not be deemed NAFTA country end products.

The following supplies qualify as ``NAFTA country end products" as that term is defined in the clause entitled ``Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program:"

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(iv) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

(2) Alternate I. If Alternate I to the clause at 52.225-21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

The following supplies qualify as ``Canadian end products" as that term is defined in the clause entitled ``Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program":

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(Insert line item numbers)

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals \* are, \* are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) \* Have, \* have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and \* are, \* are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) Procurement Integrity Certification (41 U.S.C. 423). (Applies only if the contract is expected to exceed \$100,000.)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify, to the best of my knowledge and belief, that either--

\* I have no information, or

\* I have disclosed information to the Contracting Officer concerning a violation or possible violation of subsection (a), (b), (d) or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

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[Signature of the officer or employee responsible for the offer and date]

(End of Provision)

#### **52.212-4 Contract Terms and Conditions--Commercial Items.**

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS--

COMMERCIAL ITEMS (OCT 1995)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include--

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Contract number, contract line item number and, if applicable, the order number;



- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Payments under this contract may be made by the Government either by check, electronic funds transfer, or the Automated Clearing House, at the option of the Government. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage

of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 40118, Fly American.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items.**

As prescribed in 12.301(b)(4), insert the following clause:

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders-  
Commercial Items (Aug. 1996)**

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.222-3, Convict Labor (E.O. 11755); and

(2) 52.233-3, Protest After Award (31 U.S.C 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer shall check as appropriate.)

\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

\_\_\_ (2) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

\_\_\_ (3) 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

\_\_\_ (4) 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).

\_\_\_ (5) 52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

\_\_\_ (6) 52.222-26, Equal Opportunity (E.O. 11246).

\_\_\_ (7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

\_\_\_ (8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

\_\_\_ (9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

\_\_\_ (10) 52.225-3, Buy American Act - Supplies (41 U.S.C. 10).

\_\_\_ (11) 52.225-9, Buy American Act - Trade Agreements Act - Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).

\_\_\_ (12) 52.225-17, Buy American Act - Supplies Under European Community Sanctions for End Products (E.O. 12849).

\_\_\_ (13) 52.225-18, European Community Sanctions for End Products (E.O. 12849).

\_\_\_ (14) 52.225-19, European Community Sanctions for Services (E.O. 12849).

\_\_\_ (15)(i) 52.225-21, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (41 U.S.C. 10, Pub. L. 103-187).

\_\_\_ (15)(ii) Alternative I of 52.225-21.

\_\_\_ (16) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).

\_\_\_ (17) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate.)

\_\_\_ (1) 52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.).

\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components--

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately-Owned U.S.- Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

## **Attachment 2A**

### **Commercial Item Provisions and Clauses Templates**

Extracted from web site: <http://www.safaq.hq.af.mil/contracting/policy/AQC/97-c-11.html>

Exerts from CONTRACTING POLICY MEMO 97-C-11

#### **FORMATTING AND ISSUING COMMERCIAL PURCHASE INSTRUMENTS FOR COMMODITIES:**

Written and electronic purchase instruments up to \$5M will contain only those clauses and provisions which are applicable to each acquisition and prescribed for use. Operational contracting activities should review their BCAS multi-line files, eliminate unnecessary statements, and update statements to reflect current policy and guidance.

Nearly all commodity purchases in operational contracting are commercial items, requiring the use of FAR Part 12 commercial clauses. Normally, only the clauses prescribed in FAR Part 12, DFARS Part 12 are to be used.

BCAS documents and FACNET transmissions will use the attached templates incorporating FAR 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items" and DFARS 252.212-7001, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items." Do not include the full text of FAR 52.212-5 clause. FAR 12.301(a)(4) allows purchase instruments to identify ONLY applicable -5 or DFARS -7001 clauses by reference. In most cases, the examples cited in the attached templates are all clauses needed for CONUS awards. Additional clauses within the -5 clause or the -7001 clause may be included as appropriate.

Avoid adding extraneous and unnecessary clause content to purchases. However, the FAR and DFARS Part 12 clauses may not contain all the clauses required by law or regulation for some purchases. In these cases, do not fail to include clauses as required (for example special clauses are necessary for environmental/hazardous materials, leases, services, etc. The Air Force contracting system program manager is revising its clause logic for 52.212-5 and 252.212-7001 to align with this guidance and the attached templates.

TEMPLATES  
CONTENT OF 52.212-5 AND 252.7001 CLAUSES  
FOR  
AIR FORCE  
COMMERCIAL PURCHASE INSTRUMENTS

For commercial commodities greater than \$2,500 and equal to or below \$10,000:

52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--  
Commercial Items.

(6) 52.222-26, Equal Opportunity (E.O. 11246).

(8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive  
Orders Applicable to Defense Acquisitions of Commercial Items.

252.225-7001, Buy American Act and Balance of Payment Program (41 U.S.C. 10, E.O. 10582).

For commercial commodities greater than \$10,000 and equal to or below \$25,000:

52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--  
Commercial Items.

(6) 52.222-26, Equal Opportunity (E.O. 11246).

(7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38  
U.S.C. 4212).

(8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the  
Vietnam Era (38 U.S.C. 4212).

252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive  
Orders Applicable to Defense Acquisitions of Commercial Items.

252.225-7001, Buy American Act and Balance of Payment Program (41 U.S.C.10, E.O. 10582).

For commercial commodities greater than \$25,000 and equal to or below \$50,000:

52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--  
Commercial Items.

(6) 52.222-26, Equal Opportunity (E.O. 11246).

(7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38  
U.S.C. 4212).

(8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).  
252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.  
252.225-7001 Buy American Act and Balance of Payment Program (41 U.S.C.10, E.O. 10582).  
252.225-7036 North American Free Trade Agreement Implementation Act. (Alt I)

For commercial commodities greater than \$50,000 and equal to or below \$100,000:

52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items.

(6) 52.222-26, Equal Opportunity (E.O. 11246).

(7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

(8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212)

252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

252.225-7001, Buy American Act and Balance of Payment Program (41 U.S.C.10, E.O. 10582).

252.225-7036, North American Free Trade Agreement Implementation Act.



## **Attachment 3 Checklists & Tools for Conducting Market Research**

### **Market Research Questionnaire**

1. Are there sources capable of satisfying the government's requirements?
2. Are commercial items available:
  - To meet requirements?
  - That could be modified to meet requirements?
  - That could meet requirements if the requirements are modified to a reasonable extent?
3. If commercial items are not available, are nondevelopmental items available:
  - To meet requirements:
  - That could be modified to meet requirements?
  - That could meet requirements if the requirements are modified to a reasonable extent:
4. To what extent could commercial items or nondevelopmental items could be incorporated at the component level.
5. What are customary industry terms and conditions regarding:

• Warranties	• Packaging and Marking
• Acceptance	• Pricing
• Inspection	• Customizing, Modifying or Tailoring Practices
• Buyer Financing	• Discounts
• Maintenance Support	• Laws and Regulations Unique to the Item
6. What is the extent of competitive environment, including:
  - Level of market competition
  - Sources potentially capable of satisfying requirements
  - The amount of competitive pressures on
  - Price
  - Quality
  - Product features
  - Speed of technological improvements
  - Energy efficiency
  - Service
  - Support

7. What are the environmental concerns:
  - Extent of recovered materials used in market products
  - Efficiency standards in the marketplace

## **NEED/REQUIREMENT ANALYSIS BUYER WORKSHEET**

Product/Service Information Supplied by Customer

1. What does the product do?
2. Performance requirements (How well does it do it?)
3. Where is the product used?
4. Essential physical characteristics and the environment it will be used in (Where, under what conditions? How often? How long? Who will use it?)
5. Schedule (When is it needed?)
6. Quantity (How many do we need?)

## **Market Research Report Recommended Topics**

1. An explanation of the acquisition's background, including its purpose and any special features.
2. An identification of the market research team members (at a minimum, the buyer and the requirements official).
3. A description of the agency's needs, in terms of their function, performance, and/or essential physical characteristics. This section should also discuss possible alternatives or modification to the needs statement or to the potential for trade-off analyses.)
4. Identification of the desired or required schedule for the delivery of the end items.
5. An explanation of the methodology that was used for compiling and refining the lists of potential suppliers, including the number of firms that were contacted and a list of the suppliers in the final consideration.
6. A summary of the industry sources that were contacted and the types of information obtained from them.
7. A summary of the customary commercial terms, provisions, and conditions, including payment, freight delivery, acceptance, and warranties.
8. Identification of the price ranges discovered, possible reasons for variations, and the potential or determining a fair market price
9. The Market Research, including a summary description of the available commercial or nondevelopmental items, along with their respective merits or shortcomings.

## ATTACHMENT 4

### DEPARTMENT OF THE AIR FORCE

WASHINGTON, DC

#### OFFICE OF THE ASSISTANT SECRETARY

14 Feb 1997

CONTRACTING POLICY MEMO 97-C-03

#### MEMORANDUM FOR ALMAJCOM-FOA-DRU (CONTRACTING)

FROM: SAF/AQC

1060 Air Force Pentagon

Washington DC 20330-1060

SUBJECT: Consolidation of Contract Requirements

We continue to get questions from contracting activities on bundling or consolidating contract requirements. The questions often relate to contract planning for outsourcing candidates. You need to be aware of the attached policy guidance as you work your acquisition strategies.

Consolidation (bundling) of contract requirements is often the preferred strategy because it makes good sense to do so. The enclosed policy guidance calls upon us to exercise good judgment in our acquisition strategies and to be sensitive to the role of small business.

Please disseminate these memos to your contracting activities. Later, we plan to issue a guide to aid market research and analysis. Please provide any comments, samples, or suggestions you may have which would be appropriate to include in the guide. In the meantime, we encourage you to take advantage of private sector courses and professional materials such as those available from the National Contract Management Association (NCMA) to develop skills in market research, contract incentives, and best value practices. We need to move away from our familiar ways of doing business as we look for opportunities to reduce support costs through contract alternative.

I urge you to be innovative and forward-leaning as business advisors, while maintaining the essential elements of well-thought out acquisition strategy. My point of contact is [Kathy Boockholdt](#), SAF/AQCO, (703) 695-9041, DSN 225-9041, E-mail [boockholdt@af.pentagon.mil](mailto:boockholdt@af.pentagon.mil).

*/signed/*

TIMOTHY P. MALISHENKO, Brig Gen, USAF  
Deputy Assistant Secretary (Contracting)  
Assistant Secretary (Acquisition)

Attachment:

[SAF/US Memo, 12 Dec 96, w/Atch](#)

**DEPARTMENT OF THE AIR FORCE**

**WASHINGTON, DC 20330-1000**

OFFICE OF THE UNDER SECRETARY

12 DEC 1996

MEMORANDUM FOR ALMAJCOM/CC HQ USAFA/CC 11 SPTWG/CC

SUBJECT: Consolidation of Contract Requirements (DEPSECDEF Memorandum, 28 Oct 96)

The attached memorandum on consolidation and small business replaces the last DoD policy statement on the subject issued in Jun 82. This new policy guidance affirms the Secretary of the Air Force and Chief of Staff's position, stated in their 15 Oct 96 cover letter to the Air Force Small Business Plan, that: "As we pursue our outsourcing and privatization efforts, it is imperative that small businesses be afforded meaningful and substantial opportunities", and that emphasis be given to increasing contracting opportunities for small, small disadvantaged, and women owned businesses.

Our outsourcing and privatization acquisition strategies must be aimed at achieving significant benefits in terms of reduced life cycle costs and in ensuring required services are performed. To this end, consolidation of requirements may prove to be the preferred strategy.

However, in so doing, we must be sensitive to the role of small business and not dismiss their participation as prime contractors without an in-depth market analysis. Accordingly, your small business offices must be engaged early in the formulation of acquisition strategies.

When it is determined that small business does not have the capability to participate as prime contractors, we must pursue a proactive subcontracting strategy which encourages and facilitates small business utilization. I have directed Mr. DeLuca of the Air Force Small Business Office to keep me apprised of your efforts in this area.

/signed/

Rudy de Leon

Under Secretary of the Air Force

Attachment:

[DEPSECDEF Memo, 28 Oct 96](#)

cc:

Distribution C

**DEPUTY SECRETARY OF DEFENSE  
1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010**

28 OCT 1996

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
DIRECTORS OF DEFENSE AGENCIES**

**SUBJECT: Consolidation of Contract Requirements**

The Department of Defense (DoD) recognizes the critical role small, small disadvantaged, and women-owned small businesses play in DoD's ability to accomplish its mission. Thus, DoD is committed to fostering the use of the small business community in every aspect of its vendor base.

When we plan for the consolidation of several contracts or requirements into a single larger contract, we must consider the impact on small, small disadvantaged, and women-owned small businesses. I would like to emphasize the policy considerations that must be taken into account when contracts or requirements of a kind suitable for performance by small business are proposed for consolidation:

1. Requirements shall be packaged so as not to preclude performance by small, small disadvantaged, and women-owned small business concerns as prime contractors unless the consolidation will result in significant benefits in terms of reduced life cycle costs, improved services, or both. Any such determination shall be supported by market research analysis. The proposed consolidated procurement must be reviewed by the Small Business Administration procurement center representative in accordance with the Federal Acquisition Regulation (FAR) 19.202-1(e) if it is not set aside for small business. Any disagreements between the contracting officer and the procurement center representative should be resolved pursuant to FAR 19.505. Savings solely in the Department's cost of awarding or administering contracts is not sufficient basis for consolidation.

2. Solicitations for goods and services that would have previously been set aside for small or small disadvantaged businesses shall be reviewed for set aside under the order of precedence requiring consideration of award under section 8(a), or set aside under section 15 of the Small Business Act, prior to being included in a consolidated requirement.

3. Prior to contracting for a new requirement or a follow-on to an existing requirement, particularly for professional and technical services, the contracting officer shall conduct an analysis to determine if consolidation provides significant benefits. Prior to the exercise of an option, the contracting officer shall conduct such an analysis if the analysis was not conducted at the time of initial award. For each circumstance, if the analysis indicates consolidation will not provide significant benefits, the contracting officer shall break out tasks for competition. The awards shall be consistent with the order of precedence in the Defense Federal Acquisition Regulation Supplement (DFARS).

4. If it has been determined that consolidation of tasks will result in significant benefits, small, small disadvantaged, and women-owned small business firms shall be afforded the maximum opportunity to participate as direct awardees (particularly when multiple awards are anticipated) of portions of the proposed consolidated requirement. When establishing subcontract goals for the consolidated contract, the contracting officer shall consider the proportion, type, and level of sophistication of work previously awarded to small, small disadvantaged, and women-owned small business firms. The extent of small, small disadvantaged, and women-owned small business participation in contract performance shall be addressed during source selection, consistent with DFARS 215.605. The contracting officer shall consider using the incentive and award fee provisions in DFARS 219.708 to maximize both the magnitude and level of sophistication of work subcontracted to small, small disadvantaged, and women-owned small businesses.

5. This policy statement supersedes the policy statement signed by the Deputy Secretary of Defense dated 1 June 1982, subject, "Consolidation and Small Business."

*/signed/*

Honorable John P. White

Deputy Secretary of Defense



## **ATTACHMENT 5 - Direct Conversions**

### **DEPARTMENT OF THE AIR FORCE HEADQUARTERS UNITED STATES AIR FORCE WASHINGTON, DC**

6 September 1996

MEMORANDUM FOR SEE DISTRIBUTION

FROM: HQ USAF/PER  
1070 Air Force Pentagon  
Washington DC 20330-1070

SUBJECT: Air Force Costing Policy and Procedures for Cost Comparisons and Direct Conversions

This memorandum implements costing policy and procedures required by the revised Supplemental Handbook to OMB Circular A-76, Performance of commercial Activities. The memorandum remains in effect until publication of AFMAN 38-209.

Air Force policy requires use of COMPARE to develop the government cost estimate for cost comparisons and direct conversions. Other means of developing the government cost estimate are not authorized unless approved by the Air Force Commercial Activities Program Manager.

Cost comparison changes are itemized at Attachment 1 and apply to all cost comparisons where the Government bid was not opened by 2 August 1996. (The OMB Wavier to use previous costing procedures expired on 2 August 1996.) Copies of the revised COMPARE costing software program, installation instructions and User's Guide are also attached. The number of copies provided is based on requirements established by you command. The exception is for those installations with cost comparisons, nearing bid opening where commands requested direct mailing.

Direct conversion procedures are provided at Attachment 4. These procedures were developed at the A-76 Workshop held at Randolph AFB 12-16 August 1996. They are also consistent with current Outsourcing and Privatization policies.

Refer policy questions to AF/PER, Mrs. Annie Andrews, DSN 225-7076. Costing and procedural questions are to be directed to AFMEA/PLDC, Mr. Salazar or Mrs. Dunwiddie, DSN 487-5332. Installations are to direct questions to the commands.

Signed  
DANIEL B. DeDONA, Colonel, USAF  
Chief, Manpower Requirements & Utilization Division  
Director of Programs and Evaluations

Attachments:

1. CA Cost Comparison Program Changes (not included in the market research guide)
2. COMPARE Software Program (not included in the market research guide)
3. COMPARE Installation Instructions (not included in the market research guide)
4. Direct Conversion Procedures (not included in the market research guide)

Cc:

SAF/GCQ/AQCO/FMCEE w/o atchs  
AF/LGM-1 w/o atchs

## DIRECT CONVERSION PROCEDURES

1. A commander may approve conversion of an in-house activity directly to contract, without a cost comparison, if:

- a. It is completely performed by military personnel, and there are no critical military skill or unsatisfactory rotation index skills involved; or it is completely or partially performed by 10 or less Air Force civilian employees.
- b. It involves the purchase of services from a qualified nonprofit agency serving people who are blind or with severe disabilities, or a firm with 51% Native American ownership (10 USC, 2461), regardless of the makeup of the in-house workforce.
- c. The conversion (1a or 1b above) is cost effective as required by the Federal Workforce Restructuring Act of 1994. To determine cost effectiveness:

- (1) The servicing manpower office and the functional manager of the affected activity develop an estimate of current in-house operating costs and an estimate of maximum acceptable contract bid prices. These estimates are developed using COMPARE and its instructional handbook. These estimates are independently reviewed by the installation Financial Management Office to validate their accuracy and completeness and are submitted to the contracting officer in a sealed envelope.
- (2) The contracting officer: (a) Develops a range of contact estimates, based upon at least four comparable service contracts, using acquisition market analysis procedures (cost adjustments for differences in scope maybe necessary); (b) compares the range of estimates to the maximum acceptable bid pride provided in para 1d(1) above; and (c) determines the cost effectiveness of the proposed conversion. If the contracting officer finds that potential contract costs (based on the market analysis) will be more cost effective, a solicitation is issued. A solicitation is also issued if comparable contracts to perform the analysis are not available. The solicitation will include the following statement: "The solicitation will be canceled if bids/proposals received are higher than the current cost of in-house operations." The contracting officer will compare bids received against the COMPARE maximum acceptable contract bid estimate to determine if the activity remains in-house or converts to contract. If the analysis indicates the direct conversion may not be cost effective:

- (a) Activities with ten or less military and/or civilian positions will be retained in-house.

Attch 4

(b) Activities with eleven or more military and/or civilian positions will be scheduled for a cost comparison.

- a. Military authorizations for activities retained in-house will be converted to civilian authorizations and will be appropriately coded on the CA Inventory maintained in the command Manpower Data System (MDS).

2. The commander has the responsibility to:

- a. Place or retrain employees in available permanent vacant positions, or
- b. Assign displaced employees to valid temporary or overhire positions in similar activities for gainful employment until permanent vacancies are available, or
- c. Where no vacancies exist or are projected, offer employees retraining opportunities under the Job Training Partnership Act or similar retraining programs to transition to the private sector.

3. The reporting requirements established by HQ USAF/PER memo, 8 Mar 96, Cost Comparison and Direct Conversion Candidates, apply to all direct conversions.

## ATTACHMENT 6 – DIRECT CONVERSION MARKET ANALYSIS TEMPLATE

DIRECT CONVERSION OF

\_\_\_\_\_ AFB

MARKET ANALYSIS OF  
FOUR (4) COMPARABLE CONTRACTS

### **FUNCTIONAL DESCRIPTION**

Describe the function being analyzed for direct conversion. Discuss areas such as:

- organization involved
- and the task(s) being up for direct conversion
- current in-house staff composition
- Government estimate of contractor employees, hours
- receipt of the maximum acceptable contract price and what was it comprised of
- performance period used for analysis

### **CONTRACT DATA**

Give a brief synopsis of the contracts reviewed. Then provide a summarize analysis on each of the 4 contracts by providing the following information on **each contract**:

- Contract Number
- Contractor
- Award Date
- Period of Performance
- Total Contract Amount (including any option periods)
- Services provided
- Description of Services
- Analysis Discussion - Discuss how contract was solicited, modifications, adjustments that may need to be considered such as wage rates, differences in contract requirements such as hours of operations, quantities, additional CLIN items etc.
- Analysis:

	PERFORMANCE PERIODS				
	Year 1	Year 2	Year 3	Year 4	Total
Labor	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx
ODC	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx
Indirect costs	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx
Total Price	\$xxxxxx	\$xxxxxx	\$xxxxxx	\$xxxxxx	<u>\$xxxxxx</u>

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	ESTIMATED TOTAL EFFORT (IN HOURS)				
Total Hours	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx

### **SUMMARY**

- Give the maximum acceptable contract bid price provided by XOM
- Analysis

	Total Labor	% of Maximum Bid
Contract 1		
Contract 2		
Contract 3		
Contract 4		

- Analysis of all costs

	Total Costs	% of Maximum Bid
Contract 1		
Contract 2		
Contract 3		
Contract 4		

- Analysis of hours (If applicable)

	<u>Total Estimated Hours</u>
Contract 1	
Contract 2	
Contract 3	
Contract 4	

	<u>Total Estimated Hours</u>
In house	

Include an explanation on what years the analysis is based on and what index inflation factors were used.

### **DETERMINATION**

Based on the above analysis, the results appear to support that the proposed direct conversion **is or is not cost effective.**

Contracting Officer

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